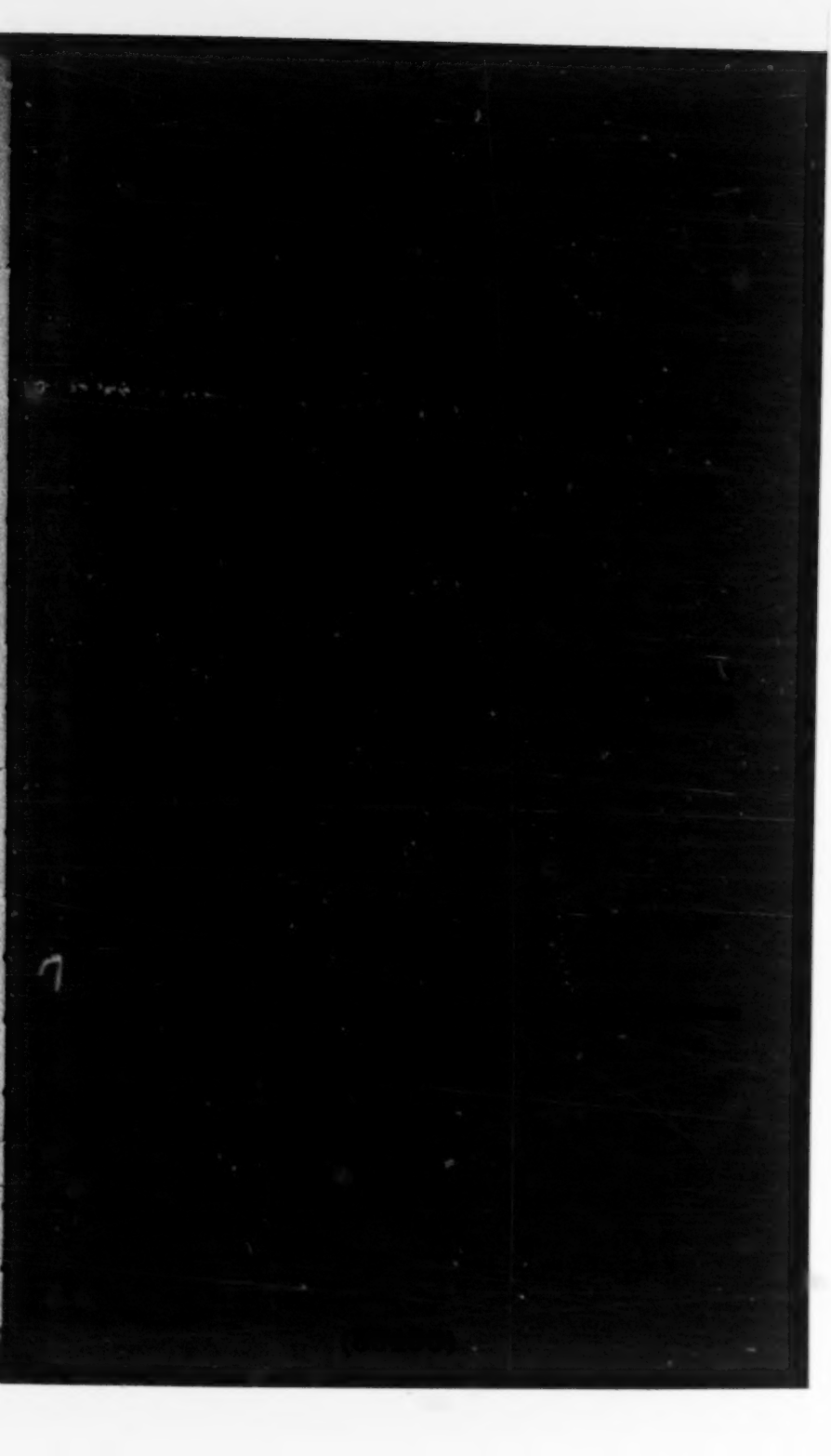

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 491

INDEX

Court of Appeals of the District of Columbia.

No. 3989.

ORINOCO COMPANY, LIMITED, et al., Appellants,

vs.

THE ORINOCO IRON COMPANY.

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a Supreme Court of the District of Columbia.

In Equity.

No. 33031.

THE ORINOCO IRON COMPANY, Plaintiff,

vs.

WILLIAM M. SAFFORD, WILLIAM G. MCADOO, Secretary of the Treasury; John Burke, Treasurer of the United States; The Manoa Company, Limited; The Orinoco Company, Limited; The Orinoco Company, The Orinoco Corporation, George E. Fitzgerald, Individually and as Administrator of the Estate of Cyrenius C. Fitzgerald, Deceased; Rudolf Dolge; Harry F. Metzel, Trustee in Bankruptcy of the Orinoco Corporation; John W. Le Crone, Receiver of the Orinoco Company, Limited; Harold H. Verge, Jackson H. Ralston, Frederick L. Siddons, and William E. Richardson, Copartners under the Firm Name of Ralston, Siddons & Richardson; James A. Radcliffe, Defendants.

NITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of olumbia, at the City of Washington, in said District, at the times ereinafter mentioned, the following papers were filed and proceedgs had, in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed November 13, 1914.

In the Supreme Court of the District of Columbia.

In Equity.

No. 33031.

THE ORINOCO IRON COMPANY, Plaintiff,

vs.

WILLIAM M. SAFFORD, WILLIAM G. McADOO, Secretary of the Treasury; John Burke, Treasurer of the United States; The Manoa Company, Limited; The Orinoco Company, Limited; The Orinoco Company, The Orinoco Corporation; George E. Fitzgerald, Individually and as Administrator of the Estate of Cyrenius C. Fitzgerald, Deceased; Rudolf Dolge; Harry F. Metzel, Trustee in Bankruptcy of the Orinoco Corporation; John W. LeCrone Receiver of the Orinoco Company, Limited; Harold H. Verge; Jackson H. Ralston, Frederick L. Siddons, and William E. Richardson, Copartners under the Firm Name of Ralston, Siddons & Richardson; James A. Radcliffe, Defendants.

To the Supreme Court of the District of Columbia:

Plaintiff states as follows:

1. Plaintiff, the Orinoco Iron Company, is a corporation created, organized and existing under and by virtue of the laws of the State of West Virginia, and files this suit in its own right.

2. The several defendants to this bill are all citizens of the United States, and except as otherwise stated they are all named as defendants herein in their individual capacity. William M. Safford is a resident of the City of New York, State of New York. William G. McAdoo is at present residing in the District of Columbia, and is the Secretary of the Treasury of the United States, and is named as defendant in his capacity as such. John Burke is at present residing in the District of Columbia, and is Treasurer of the United States, and is named as defendant in his capacity as such. The Manoa Company, Limited, is a corporation organized and existing under and by virtue of the laws of the State of New York. The Orinoco Company is a corporation of the State of Washington. The Orinoco Company, Limited, is a corporation organized and existing under any by virtue of the laws of the State of Wisconsin. The Orinco Corporation is a corporation organized and existing under and by virtue of the laws of the State of
2 West Virginia. James A. Radcliffe is, as plaintiff is advised and believes, a resident of the City and State of New York. George E. Fitzgerald is, as plaintiff is informed and believes, a

resident of the State of Massachusetts and was appointed administrator of the estate of Cyrenius C. Fitzgerald, deceased, by the Surrogate Court of the County of New York, State of New York, and is named as defendant both individually and as such administrator. Harry F. Metzel, who is purporting to act as trustee in bankruptcy of the Orinoco Corporation, under appointment from the United States District Court for the Southern District of Ohio, Western Division, is a resident of Cincinnati, Ohio, and is named as defendant in his capacity as such trustee in bankruptcy. John W. Le Crone, who is purporting to act as the receiver of the Orinoco Company, Limited, appointed by the Circuit Court of Rice County, Minnesota, is a resident of Faribault, Minnesota, and is named as defendant in his capacity as such receiver. Harold H. Verge is a resident of the State of Montana.

3. The subject-matter of this suit is a certain sum of three hundred eighty-five thousand dollars ($385,000.00) agreed to be paid by the United States of Venezuela to the United States of America, in eight equal annual instalments of forty-eight thousand one hundred twenty-five dollars ($48.125.00) each, pursuant to a protocol of settlement between said United States of Venezuela and the United States of America, signed at Caracas, Venezuela, September 9, 1909, the United States acting therein on behalf of said Orinoco Corporation, and of its predecessors in interest, said Manoa Company, Limited, the Orinoco Company, and said Orinoco Company, Limited. By said protocol the United States of America, on behalf of said corporations, and in consideration of the aforesaid payments, released to the United States of Venezuela forever all the right, title and interest of said corporations in and to the following rights and property, hereinafter called the Fitzgerald con-
3 cession, to wit: "The concession granted by the Government of the said the United States of Venezuela unto Cyrenius C. Fitzgerald, under date of September 22, 1883, which concession was afterwards transferred and assigned by said Fitzgerald unto the said the Manoa Company, Limited, and by that company to the said the Orinoco Company, and by that company to the said the Orinoco Company, Limited, and by that company to the said the Orinoco Corporation, including all the rights, privileges, benefits and immunities which are, or have ever been, claimed by said Fitzgerald and said several companies, or by any, or either of them, in or to the aforesaid premises or concession, or any part or parcel thereof, or to the deposits or mines of iron, asphalt, gold or other minerals or substances of whatever description within the limits of said concession, as well as the administration, saw-mill, and other buildings, and all machinery and other personal property now on said concession belonging to said companies, or either or any of them." And by said protocol the United States of America on behalf of said companies, also waived, in favor of the United States of Venezuela, "all and singular, the claims and demands of the said companies, and of each and every of them which they, or either, or any of them, or the said the United States of America, on their behalf, have made or might make against the said the

United States of Venezuela, originating out of, or in any way connected with, or appertaining to said concession, or to the rights, privileges, benefits and immunities thereby granted or conceded or growing out of the alleged seizure and destruction of the steamer the "Perla" by the military forces of the said the United States of Venezuela, and from all and singular the other claims and demands, if any, which might be made in behalf of said companies, or any, or either of them, which they or any, or either of them, or the said the United States of America, in their behalf, have made or might make against the said the United States of Venezuela, on any account whatever."

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A copy of said protocol of September 9, 1909, marked "Exhibit A", is hereto attached and made a part hereof.

A copy of said Fitzgerald concession, marked "Exhibit B," is also attached hereto and made a part hereof.

4. The first instalment of said indemnity, amounting to $48,125.00 was paid by Venezuela in September, 1909, and the second installment of a like amount in September, 1910. Both of said sums were covered into the Treasury of the United States as a trust fund to be distributed to the beneficaries thereof, the United States having no right, title or beneficial interest therein. On June 20, 1911, the State Department issued a notice of its proposed distribution of said fund, a copy of which notice marked "Exhibit C," is attached hereto and made a part hereof. According to said notice the amount then on deposit in the Treasury was to be distributed in pursuance of certain action taken by the several corporations named in said protocol of September 9, 1909, and their alleged representatives, by which the rights of the Manoa Company and the Orinoco Company in and to said indemnity fund were assigned to the Orinoco Corporation, represented by its alleged trustee in bankruptcy. Said notice further stated that the receiver of the Orinoco Company, Limited, the trustee in bankruptcy of the Orinoco Corporation and the representative of the defendant attorneys in a suit brought by one Padron Ustariz against the Manoa Company, Limited, and the Orinoco Company, Limited, had agreed that said indemnity fund should be distributed as follows: $75,000.00 to the receiver of the Orinoco Company, Limited, and the balance to the trustee in bankruptcy of the Orinoco Corporation, less $8,000.00 for said attorneys' fees and $6,536.33 for expenses incurred by the United States in the settlement of the claims.

5. On June 26, 1911, the State Department issued a certificate requesting the Secretary of the Treasury to issue a warrant to the defendant, Rudolph Dolge, as trustee in bankruptcy of the Orinoco Corporation in the sum of $79,263.97, and on June 30, 1911, a Treasury warrant for said amount was delivered to said Rudolph Dolge. at Washington, in this District, who forthwith proceeded to New York for the purpose of cashing the same.

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6. On or about said last mentioned day the defendant William M. Safford filed suit in this court, which said suit is entitled William M. Safford vs. William G. McAdoo et al., Equity No. 30289. And in his bill of complaint in said suit said Safford alleged that, as

creditor and stockholder of said Manoa Company, Limited, he had an equitable lien upon said indemnity fund of $385,000.00 as the same might be paid into the Treasury of the United States in pursuance of said protocol of September 9, 1909, and that certain of the defendants named in his bill had contrived and conspired, by consent agreements or otherwise, to secure the distribution of said fund in such a manner as to prevent any part of it going to the Manoa Company, Limited. On July 20, 1911, Safford amended his bill by adding certain averments, among others that the bankruptcy proceedings instituted in the Federal Court of the Southern District, Western Division, of the State of Ohio, through which said Rudolph Dolge had been appointed trustee of said Corporation were null and void, as also the proceedings instituted in the Circuit Court of Rice County, State of Minnesota, whereby an effort had been made to transfer to the receiver appointed by that Court all of the property and assets of said Orinoco Company, Limited. Said bill prayed the appointment of a receiver to hold the instalments of said indemnity fund that had been paid into the Treasury, and for an injunction preventing the payment of said sums or any future instalment of said fund to other than such a receiver.

6 7. Thereafter said cause came on for hearing, and it appearing that said Treasury warrant for $70,263.97 had been issued to said Rudolph Dolge, as trustee in bankruptcy for the Orinoco Corporation, this court, by an order made July 21, 1911, appointed said Dolge receiver in said cause and enjoined him from depositing said warrant other than to endorse it to himself as such receiver, and said order as modified by an order entered in said suit July 24, 1911, enjoined and restrained said Rudolph Dolge and said Orinoco Company, Limited, its officers, agents, and representatives from disposing of any such funds, excepting to pay the same to said Dolge as receiver in this cause.

8. By an order made October 25, 1912, as modified by an order made November 20, 1912, the then Secretary of the Treasury and the then Treasurer of the United States (for whom the present Secretary of the Treasury and the present Treasurer of the United States have been duly substituted as defendants) were enjoined by this court from delivering outside of the District of Columbia any draft or warrant on the fund covered by said proceedings to any persons named in the certificate of the Secretary of State, and said defendants were further enjoined from honoring, cashing or paying any of the warrants or drafts referred to in said order except upon the endorsement of the receiver appointed in this cause or of a receiver appointed in substitution thereof.

9. Notwithstanding the restraining order issued by this Court on July 21, 1911, as aforesaid, said Rudolph Dolge thereafter caused said sum of $70,263.97 to be distributed to himself as trustee of the Orinoco Corporation, and said Dolge has failed to account for such funds except to report that he had received no such amount as the receiver appointed by this court in said cause. And plaintiff is informed that said Dolge has left the jurisdiction of this court and as

such receiver has failed to file a report as required by Equity Rule 73, and by reason of such failure the said Dolge has forfeited his office as such receiver, and the said office is now vacant.

7 10. Later one Harry F. Metzel, a resident of Cincinnati, Ohio, succeeded said Dolge as trustee in bankruptcy of said Orinoco Corporation, and pursuant to a certificate of the State Department a Treasury warrant for $37,750.00 payable from said indemnity or trust fund was drawn by the Secretary of the Treasury to said Metzel's order as said trustee in bankruptcy, but the same, so far as plaintiff is informed, has not been delivered.

11. On August 28, 1912, the Secretary of State issued a certificate for the payment of $9,375.00 of the aforesaid indemnity fund to defendant John W. Le Crone, a resident of Faribault, Minnesota, as receiver of the Orinoco Company, Limited, appointed by the Circuit Court of Rice County in that State; and the records of this court show that said Le Crone by his attorney applied for a writ of mandamus to compel the Secretary of the Treasury to pay over to said Le Crone as receiver said sum of $9,375.00, and that, in accordance with the prayer of a supplemental bill filed May 14, 1913, by the said Safford, defendant herein, the defendant Le Crone was enjoined from maintaining said mandamus proceedings.

12. The defendant George E. Fitzgerald, in said suit of Safford vs. McAdoo, in addition to answering said Safford's bill, filed a cross bill, in his own right and as administrator of the estate of his father, Cyrenius C. Fitzgerald, in which he asserted an equitable lien upon said indemnity fund of $385,000.00 referred to in said protocol of September 9, 1909, upon grounds similar to those set up in the original and supplemental bills of said Safford, claiming in addition that the title to all iron and asphalt mines in said concession granted by Venezuela to said Cyrenius C. Fitzgerald under date of September 22, 1883, and by him granted to said Manoa Company, Limited, on June 14, 1884, were by resolution of the Board of Directors of said Manoa Company, Limited, regranted to Fitzgerald and were not included in any of the transfers thereafter mentioned in his bill.

13. March 11, 1911, by leave of court, Harold H. Verge, a resident of the State of Montana, filed an intervening petition in said cause, claiming a lien on said indemnity fund as a judgment creditor

8 of the Orinoco Company, Limited, and its receiver.

14. On or about April 29, 1913, by leave of court, Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, residents of the District of Columbia, filed an intervening petition in said cause claiming an equitable lien on said fund for professional services rendered the Orinoco Corporation as attorneys in the prosecution of its claims against Venezuela arising out of said Fitzgerald concession.

15. August 12, 1913, by leave of court, James A. Radcliffe, filed an intervening petition in said cause claiming an equitable lien upon said fund as assignee of the rights of E. V. Radcliffe, one of the associates of William M. Safford and Cyrenius C. Fitzgerald in respect to said concession.

16. On October 9, 1914, plaintiff filed its petition for leave to ntervene in said suit of Safford vs. McAdoo, which petition has been vithdrawn by leave of court without prejudice.

17. Plaintiff further says that while answers and other pleadings ave been filed on behalf of certain defendants in said cause, and ome testimony has been taken, said cause has not been brought to inal hearing; and plaintiff further says that on the 9th day of No-ember, 1914, application was made by the plaintiff Safford and the ross-complainant Fitzgerald to have the restraining orders thereto-ore issued in said suit vacated as against the Orinoco Corporation nd Harry F. Metzel, trustee in bankruptcy of said corporation, vhich if granted will have the effect of releasing a very large part f said indemnity fund and getting it out of the jurisdiction of this ourt.

18. And for further cause of complaint plaintiff says that on July 2, 1897, it entered into a certain contract with said Orinoco Com-any, Limited, defendant in this cause, and one of the companies nentioned in said protocol of September 9, 1909, (Exhibit A). A opy of said contract is attached hereto and made a part hereof, narked "Exhibit D." And plaintiff says that in and by said con-ract said Orinoco Company, Limited, represented to plaintiff that t the time of the making thereof the aforesaid grant and concession rom the United States of Venezuela known as the Fitzgerald con-ession was held and possessed by said Orinoco Company, Limited, for a period of ninety-nine years from September 22d, 1883, "with all the resources thereof," and that said grant and con-cession had been in all respects duly confirmed and estab-ished in said Orinoco Company Limited. That in and by said con-ract said Orinoco Company, Limited, further represented to plain-iff that from examinations theretofore made it was believed that arge and valuable deposits of iron ore existed in said Fitzgerald Con-ession, and more particularly in the vicinity of Santa Catalina, on the outherly side of the Orinoco River and in close proximity thereto, vhich could be loaded at landings upon said river and transported lown the same to Atlantic seaports. That plaintiff entered into said ontract in full reliance upon these and the other representations nd assurances contained therein. That by said contract said Orinoco Company Limited, for the considerations therein named, granted and onfirmed unto plaintiff, the Orinoco Iron Company, its successors nd assigns, subject to certain conditions unnecessary here to be men-ioned, the exclusive right, license, privilege and option, by itself, its gents, servants, employees, contractors, sub-contractors, lessees and ub-lessees, to enter upon the said premises and any of the lands upon aid concession, for the purpose of exploring for, mining, removing nd shipping any and all deposits of iron ore that might be found to xist in, upon or under any and all of said lands during the life and eriod of the said concession and of the said grant under and by vhich the said Orinoco Company held the same. By said contract aid Orinoco Company Limited further agreed that "while this agree-nent is in force and effect between the parties hereto, the said Orinoco

Company will not grant to any other person, company or corporation, any right, privilege or license to enter upon its concession for the purpose of exploring for, mining and shipping iron ore therefrom, nor itself engage therein, except it be in co-operation with the said Iron Company, so long as the terms, provisions and conditions of this agreement are duly kept and performed by the said Iron Company; it being the intendment hereof to grant and assure to the said Iron Company, its successors and assigns, the exclusive right
10 to open up, develop and operate iron mines upon the said concession so long as the conditions of this contract are duly and in good faith kept and performed, and to assure to the said Iron Company, its successors and assigns, the protection which the said Orinoco Company enjoys from the said Government and the benefit of the exemptions and immunities of its said concession so far as relates to the operation and products of such mines."

19. And plaintiff says that in making said contract with it of July 22, 1897, and all representations and covenants contained therein, and in all its subsequent dealings with plaintiff, said Orinoco Company, Limited, acted as the agent of and with the knowledge of the defendant Safford, said Cyrenius C. Fitzgerald, the original holder of said concession, the defendant the Manoa Company, Limited, the defendant the Orinoco Company, and all others claiming a prior interest in said Fitzgerald concession, said parties having agreed to make said Orinoco Company, Limited, the operating company in respect to said concession.

20. After the execution of said contract of July 22, 1897, plaintiff duly entered upon the performance thereof, and for that purpose sent engineers and other representatives and employees from the United States to said Fitzgerald concession in Venezuela, arranged with the United States Government to survey and chart the mouth of the Orinoco River known as the Boca Grande, built docks and tramways, installed machinery, imported laborers, entered into contracts and agreements in England and the United States for the sale of the iron ore upon said concession, sending representatives to England for that purpose, and in these and other ways endeavored faithfully to develop the property in question, and to mine and ship the iron ore contained or supposed to be contained therein, and to comply in all respects with the terms of said contract as amended and confirmed, and continued such efforts and operations, from August, 1897, until the summer of 1900. The explorations and investigations first made by plaintiff upon said concession developed the fact that there were no such great deposits of iron ore in sight, or in the vicinity of
11 Santa Catalina, as plaintiff had been led by the Orinoco Company, Limited, to believe, and plaintiff demanded repayment of its expenditures up to that time by the Orinoco Company, Limited, because of said misrepresentations; but later, being urged and induced by said Orinoco Company, Limited, to make further explorations, considerable deposits of iron ore were found to exist near Manoa, which deposits were embraced in said Imataca Iron Mine, said mine being embraced within the limits of said Fitzgerald

concession, and upon the discovery of these deposits, which constituted the only known deposits of iron ore of workable value upon said concession, plaintiff consented to go on with its contract with the Orinoco Company, Limited, as aforesaid, notwithstanding the aforesaid misrepresentations, provided said company would secure plaintiff in the full and peaceable possession of said Imataca Iron Mine under its said contract, which said company agreed to do, the time for plaintiff to begin mining and shipping ore being extended on account of said misrepresentations, as appears from a supplemental contract entered into between the parties on August 5th, 1899, a copy of which, marked Exhibit E, is attached hereto and made a part hereof. Thereupon plaintiff proceeded with the performance of its contract, but its possession of said Imataca Iron Mine was shortly thereafter menaced by the action of the Venezuelan Government with respect to the supposed rights of an English syndicate, known as the Orinoco Iron Syndicate (Limited), in said mine, said syndicate having received a grant of said mine from one George Turnbull who claimed title to all the territory, rights and property embraced within the Fitzgerald concession under an alleged later concession from certain of the Venezuelan authorities. The property and rights of said English syndicate in said Imataca Iron Mine had been seized by the Venezuelan Government in 1897 for an alleged violation of its customs laws and judicially condemned and ordered sold, and, pursuant to the aforesaid agreement between plaintiff and the Orinoco Company, Limited, by which said company was to secure plaintiff in the full and peaceable enjoyment of said Imataca Mine, said
12 property and rights of said English syndicate in said Imataca Mine, were purchased by Benoni Lockwood, Jr., plaintiff's secretary and attorney, at the instance and request of the Orinoco Company, Limited, at the sale so judicially decreed, on or about November 18, 1898, and on or about November 29, 1898, the said property and rights so purchased were conveyed by said Lockwood to the Orinoco Company, Limited, to be held by it for the use and benefit of plaintiff under the aforesaid agreement. And plaintiff said that in order to obtain possession of the machinery of said English syndicate it was also obliged to pay Gen. Joaquin Berrio, the administrator of customs at the port of Ciudad, Bolivar, one thousand dollars for the same. Thereafter plaintiff proceeded with its attempts as aforesaid to perform its part and of said contract of July 22, 1897, as later amended and confirmed, and to mine and ship iron ore from said Imataca Iron Mine, and during the period of its operations plaintiff mined approximately five thousand tons of ore, of which it shipped about fifteen hundred tons, leaving about thirty-five hundred tons at the mine, and during said period, plaintiff also stripped and placed in sight, ready for breaking down and shipping, about five hundred thousand tons more of iron ore, all of said ore being of a high grade and worth at that time about five dollars and a half a ton. Plaintiff had purchasers and a ready and unlimited market for all of said iron ore which it could mine and ship, and plaintiff would have been able to ship and dispose of all said ore so

mined and shipped as aforesaid, and to mine, ship and dispose of the rest of said ore in said Imataca Iron Mine, at about said price of five dollars and a half a ton, if its possession of said Imataca Iron Mine and its mining and shipping operations had been allowed to proceed uninterruptedly. The efforts of plaintiff to operate said Imataca Iron Mine and otherwise comply with the terms of its contract with the Orinoco Company, Limited, were, however, greatly obstructed and impeded by the endeavors of the established governmental authorities of Venezuela to invalidate and annul said Fitzgerald concession and to uphold and enforce said grant to said George
13 Turnbull of the same property and rights, including said Imataca Iron Mine, and by the litigation in the courts of Venezuela to which said Turnbull grant and said action of the Venezuelan authorities gave rise, all of which acts and proceedings constituted a constant and serious menace to the title to and possession of said concession and the iron deposits therein by plaintiff and the Orinoco Company, Limited. The operations of plaintiff as aforesaid under said contract were further greatly obstructed and impeded by the action of certain revolutionists in Venezuela, which made it both costly and unsafe for plaintiff to mine and ship said iron deposits, said revolutionists having impressed a large number of the natives employed by plaintiff at said Imataca Mine into their service, and illegally detained the very first shipment of iron ore made by plaintiff, which action entailed large expense upon plaintiff; and during said period the established governmental authorities of Venezuela wholly failed to afford plaintiff the privileges and protection to which it was entitled under said Fitzgerald concession and its said contract of July 22, 1897, with said Orinoco Company, Limited. And finally, by reason of the aforesaid conditions, in the summer of 1900 plaintiff was forced to abandon all attempts to operate said Imataca Iron Mine and was driven from said concession.

21. Plaintiff duly notified its grantor, the Orinoco Company, Limited, of the difficulties it was experiencing in retaining the possession of and operating the property in question, and called upon said Company to establish plaintiff in its rights under its contract. The Orinoco Company, Limited, however, represented to plaintiff that it was financially unable to accomplish this result, and requested plaintiff to advance the necessary sums to defend it and plaintiff in the title to and possession of said property, and for that purpose and upon said request plaintiff advanced said Orinoco Company, Limited, and expended for its benefit in defense of the title to said concession and in the litigation above referred to a sum in excess of thirty thousand dollars ($30,000.00), which amount said Orinoco Company,
Limited, agreed to credit to plaintiff upon the royalties it was
14 to receive under said contract of July 22, 1897; but said Company has at no time ever placed plaintiff in peaceable possession of said property, nor has it repaid said sum of thirty thousand dollars advanced as aforesaid, or any part thereof.

22. In the exploration, development and operations of said Fitzgerald concession and the defense of the title thereto, as aforesaid, plaintiff expended substantially the following amounts, to wit:

For examination of engineers at Santa Catalina, Manoa, Piacoa, and surveying and charting the Boca Grande	$26,500.00
To expenses of engineers accompanying survey trip made by U. S. S. "Dolphin", engaged in determining river measurements, location of bars and harbors	10,000.00
Paid for demurrage and freight for illegal detention of SS "Mercedes", chartered by plaintiff for handling a cargo of iron and held by revolutionists	12,000.00
For expenses incurred in the management of the business and the development of the mines at Manoa, including machinery, equipment, supplies and labor	95,000.00
Paid legal expenses and court costs at Caracas, Ciudad Bolivar, and the attorney's fees paid in an endeavor to retain possession for the Orinoco Company, Limited..	30,000.00

the total sum so expended by plaintiff in its endeavor to carry on the work as called for by its contract with the Orinoco Company, Limited, amounting to one hundred and seventy-three thousand, nine hundred eight dollars and forty-seven cents ($173,908.47), all of which expenditures have become a total loss to plaintiff, and which sums plaintiff says constitute the bulk of the expenses incurred by any one, including said Orinoco Company, Limited, and the other corporations named in said protocol of September 9, 1909, in the development of said concession and the protection of the title of said corporations thereto.

23. Plaintiff says further that as a result of its forced abandonment of its mining and shipping operations as aforesaid it lost the sale of the thirty-five hundred tons of iron ore which it had mined and of the five hundred thousand tons of iron ore which it had stripped and placed in sight as aforesaid and the sale of which would have given plaintiff a net profit of about one million dollars, and that it further suffered a loss reasonably to be estimated at five millions of dollars because of its ouster from said Imataca Iron Mine as aforesaid.

24. After plaintiff was forced to abandon operations and was driven from said concession as aforesaid, the Orinoco Company, Limited, wrongfully and unjustly, and with the intent to injure and defraud plaintiff, attempted to declare a forfeiture of said contract of July 22, 1897, as amended and confirmed, on the ground of plaintiff's alleged failure to perform the same, said company having abandoned a previous unjust and unwarranted attempt to terminate said contract made by it in April, 1900, in view of the objections then made by plaintiff and the assistance which it afforded said company in the defense of the title to said Imataca Iron Mine and said concession. Said second attempt to terminate said contract (notice of which was communicated to plaintiff under date of March 8, 1901) was also wholly unwarranted and unavailing, as several months prior thereto the Orinoco Company, Limited, had been ousted by the Venezuela Government from the possession of said Imataca Mine by judicial decree rendered on or about June 7, 1900, in a suit begun by George Turnbull in one of the courts of Venezuela about

April or May, 1899, in which suit the Orinoco Company, Limited, was a party defendant, and the cost of defending which had been borne almost entirely by plaintiff, at the instance and request of said company. Execution upon the decree so rendered in said suit was had on August 4, 1900, on which date the Orinoco Company, Limited, was physically dispossessed of said Imataca Iron Mine and its representatives upon said property ousted; and by virtue of said judicial decree and execution said George Turnbull was put in possession of said Imataca Iron Mine and of the property of the plaintiff and of the Orinoco Company, Limited, thereon, including the iron ore mined and stripped by plaintiff as aforesaid, and the Orinoco Company, Limited, and its representatives were enjoined from interfering with said Turnbull's possession. Moreover, on, to wit, October 10, 1900, the entire Fitzgerald concession had been declared annulled by the Chief Executive of Venezuela, against
16 which proceeding plaintiff on behalf of itself and said Orinoco Company, Limited, had earnestly protested to the Government of the United States at Washington and had endeavored to enlist its support in protecting the title of its grantor and itself to said Fitzgerald concession and said Imataca Iron Mine. And plaintiff says that the Orinoco Company, Limited, was not in a position to put and maintain plaintiff in the peaceable possession of said properties and the full enjoyment of its rights under its contract of July 22, 1897, as amended and confirmed, at the time of any said attempts to terminate said contract, nor was it in such a position prior or subsequent thereto.

25. In response to notice of all said attempts to terminate its contract as aforesaid plaintiff advised the Orinoco Company, Limited, that such action was unjustifiable and of no force or effect whatever, and that plaintiff was ready to proceed with the performance of its part of said contract of July 22, 1897, whenever it was assured by the Orinoco Company, Limited, that it was in a position to give plaintiff proper title, possession and unhampered operation.

26. Plaintiff further says that said last attempt to terminate its contract as aforesaid was for the purpose of enabling the Orinoco Company, Limited, to confiscate the rights and property of plaintiff in and upon said concession arising as aforesaid, and to defraud plaintiff of its said rights and property, and that after said last attempt to terminate its contract as aforesaid the Orinoco Company, Limited, and its alleged successor in interest, said Orinoco Corporation, in the Presentation of their claims aganst Venezuela arising out of the ouster of said Orinoco Company, Limited, and of plaintiff from said Fitzgerald concession, and in otherwise dealing with said concession, asserted full title to all the iron deposits in said concession and all the improvements and other property of plaintiff thereon, including the iron ore mined and stripped by plaintiff as aforesaid, as well as to the steamer "Perla" referred to in said protocol of September 9, 1909, which vessel was plaintiff's property, and undertook to make contracts with respect to the iron deposits in
17 said concession and the iron ore mined by plaintiff as aforesaid in entire disregard of the said contract of July 22, 1897,

with plaintiff, as later amended and confirmed. Plaintiff further avers that notwithstanding said second attempt to terminate its contract as aforesaid said Orinoco Company, Limited, in the presentation through the Department of State of the United States and otherwise, of its claims against Venezuela arising from its ouster from said Fitzgerald concession, relied upon the efforts of plaintiff to operate as proof of a bona fide attempt on the part of said company to comply with the terms of said Fitzgerald concession. And plaintiff further says that in the presentation of their claims for damages against Venezuela as aforesaid and as a basis for the award finally secured in said protocol of September 9, 1909, said Orinoco Company, Limited contended that it had been practically ousted from said concession and from said Imataca Iron Mine by the executive and judicial decrees and action of the Venezuelan authorities above mentioned.

27. Plaintiff was at all times ready to proceed with its operations upon advice and assurance from the Orinoco Company, Limited, that it was in a position to put plaintiff in peaceable possession of its rights in said concession and of its property thereon, and was awaiting such advice and assurance when informed that said protocol of September 9, 1909, between the United States and Venezuela had been signed, which protocol, as plaintiff is advised and believes was intended to operate as a sale, release and extinguishment of all the claims, rights and interests of plaintiff in said Fitzgerald concession as against the United States of Venezuela arising as aforesaid, the intent and purpose of said protocol being to relieve the United States of Venezuela of all claims for damages by all persons claiming under said Fitzgerald concession. And plaintiff says that such action was wholly unauthorized by it.

28. The premises considered, plaintiff has and claims a beneficial interest in and prior lien upon said award of $385,000.00 agreed to be paid to the United States of America by said protocol of September 9, 1909, and upon the several instalments thereof as the same may be paid into the Treasury of the United States, for the sums expended by it as aforesaid in the exploration, development and operation of said concession, including said Imataca Mine, and in the defense of the title thereto, with interest thereon from the date of its ouster from said concession, and for the losses and damages it has suffered as aforesaid by reason of its ouster from said Fitzgerald concession as aforesaid, and the appropriation of its rights in said concession and in said Imataca Iron Mine and of its property thereon as aforesaid. And by reason of the premises plaintiff says that the Secretary of the Treasury and the Treasurer of the United States hold and will hold all instalments of said award which may come into their hands as trustees for plaintiff for the satisfaction of its claims arising as aforesaid.

18

29. Immediately upon hearing of the signing of said protocol of September 9, 1909, plaintiff presented to the then Secretary of State of the United States, Hon. Philander C. Knox, a petition setting forth its claims, substantially as aforesaid, to the benefit of said fund of $385,000.00 agreed to be paid thereby, but the State Department refused to adjust the claims of plaintiff as set forth in said petition,

holding that they were not cognizable by said Department and that plaintiff must seek relief in the courts.

30. Plaintiff further says that its said grant of the iron deposits in said Fitzgerald concession and particularly to the Imataca Mine was made as aforesaid by the Orinoco Company, Limited, with the knowledge and consent of said Manoa Company, Limited, and said William M. Safford, (plaintiff in this cause), George E. Fitzgerald (defendant and cross-complainant), and James A. Radcliffe (intervenor), or the persons to whose rights and interests they have succeeded, and said Orinoco Company, Limited, was their authorized agent in making said agreement of July 22, 1897, with your plaintiff; and that any rights of said parties as between themselves and the other defendants (referred to in their several bills and petitions in this cause), in respect to said concession and to said sum of $385,000.00 agreed to be paid to the United States by Venezuela as
19 aforesaid by said protocol of September 9, 1909, are inferior and subordinate to the rights of plaintiff in said concession and in respect to said award arising as aforesaid.

31. Plaintiff further says that, under the facts and circumstances above stated, the rights and interests of said Orinoco Company, Limited, and of its alleged receiver, in said concession and in said indemnity fund of $385,000.00 referred to in said protocol of September 9, 1909, are inferior to and subject to the rights and interests of plaintiff arising as aforesaid.

32. Plaintiff further says that any interest which said defendant, the Orinoco Corporation, may have had in said Venezuelan concession, or may now have in said indemnity fund of $385,000.00 referred to in said protocol of September 9, 1909, were acquired by said Orinoco Corporation subsequent to and with knowledge of the rights and interests of plaintiff in said concession arising as aforesaid, and with knowledge of its said agreement with the Orinoco Company, Limited, of July 22, 1897, and that the rights of said Orinoco Corporation and those of its alleged trustee in bankruptcy are inferior and subordinate to the rights and interests of your plaintiff in respect to said sum of $385,000.00 arising as aforesaid.

33. Plaintiff further says that, in view of the facts and circumstances above stated, the agreement between the alleged receiver of the Orinoco Company, Limited, and the alleged trustee in bankruptcy of the Orinoco Corporation, referred to in the notice of the proposed distribution of said indemnity fund issued by the State Department under date of June 30, 1911, by which agreement the receiver of the Orinoco Company, Limited, was to receive only $75,000.00 of said sum of $385,000.00, and the alleged receiver in bankruptcy of the Orinoco Corporation was to receive the balance less $8,000.00 attorney's fees, and certain other expenses, is in fraud of the interest of plaintiff in said fund and of its rights as against the Orinoco Company, Limited, arising as aforesaid.

34. Plaintiff further says, on information and belief, that the proceedings in bankruptcy in the District Court of the United
20 States for the Southern District of Ohio begun *in* November 29, 1910, by which a receiver and trustee was appointed for

the Orinoco Corporation, and the insolvency proceedings thereafter had in the District Court of Rice County, Minnesota, by which a receiver was appointed for the Orinoco Company, Limited, above referred to, and the assignment to the alleged trustee in bankruptcy of the Orinoco Corporation of the rights and claims in and to said indemnity fund of $385,000.00 by the Manoa Company, Limited, and the Orinoco Corporation, referred to in said notice of distribution of the State Department of June 20, 1911, were all fraudulent and collusive and for the purpose of defrauding plaintiff and the creditors of the Orinoco Company, Limited, and other persons who might have an interest in said fund; and that said bankruptcy proceedings in the United States District Court for the Southern District of Ohio, Western Division, are wholly void by reason of the following facts: said Orinoco Corporation had not, at the time of the filing of petition or for the preceding six months or the greater portion thereof, its domicile or its principal place of business or any property within the territorial jurisdiction of said court; said corporation was not transacting any business within the jurisdiction of said court, and such business as it had was being transacted by the defendant said Rudolph Dolge, as managing directors thereof, in the District of Columbia; the proceedings and papers filed in said cause show on their face that the assets alleged to be owned by said Corporation exceeded the amount of its debts; and because said Dolge, at the time of his said appointment as receiver and trustee respectively, had not an office within the territorial limits of said court, and did not reside therein. And said insolvency proceedings purported to have been taken in the District Court of Minnesota for Rice County were and are wholly void for want of jurisdiction, said Orinoco Company, Limited, not having its domicile or its principal place of business within the territorial jurisdiction of said court, and said proceedings have been begun and carried forward in fraud of plaintiff and the creditors and stockholders of said company by a fraudulent
21 collusive agreement between the persons acting as directors thereof on the one hand and said Dolge on the other, whereby the right, title and interest of said Orinoco Company, Limited, in and to said Fitzgerald concession and said indemnity fund were fraudulently renounced in favor of said Dolge acting as trustee of the Orinoco Corporation, save and except only as to the sum of $75,000.00 which, in and by said fraudulent and collusive agreement, was permitted to pass into the hands of the alleged receiver of the Orinoco Company, Limited, for the purpose of being used to pay a certain alleged judgment held by said George N. Baxter against said Corporation, and so to pass into the hands of said Baxter.

35. And plaintiffs says, on information and belief, that the order vacating the injunction in said suit of Safford vs. McAdoo attempted to be taken as aforesaid by the plaintiff and the cross-complainant Fitzgerald therein, and by said Harry F. Metzel, trustee in bankruptcy of the Orinoco Corporation and others of the defendants in said suit to this plaintiff unknown, was in pursuance of an understanding or agreement between the aforesaid parties whereby it was sought to remove said indemnity fund provided by said protocol

of September 9, 1909, out of the District of Columbia and to prevent this court from administrating the same, and with the intent to hinder, delay and defraud plaintiff and other persons having a beneficial interest therein.

36. Plaintiff has no adequate remedy at law, because of the refusal of the State Department as aforesaid to adjust its claims, and in view of the fact that this court, sitting as a court of equity, has secured jurisdiction and control over said fund of $385,000.00 referred to in said protocol of September 9, 1909, as the same may be paid into the Treasury, and because said defendants the Manoa Company, Limited, the Orinoco Company, Limited, and the Orinoco Corporation, are insolvent and totally without assets except for such interest as they may have in said fund.

37. Plaintiff further avers that, until a few months ago, it was wholly without funds, and was wholly unable to raise funds, to
22 employ counsel and prosecute this or any other legal proceedings for the maintenance and protection of its rights in and to the indemnity fund agreed to be paid to the United States by the Republic of Venezuela pursuant to said protocol of September 9, 1909, having been impoverished by the very acts complained of in its bill, to wit, the large expenditures mentioned therein made by it under its contract with the Orinoco Company, Limited, the action of the Venezuelan authorities in driving it from said Fitzgerald concession, and by the action of its grantor, the Orinoco Company, Limited, and its successor in interest the Orinoco Corporation, defendants in this suit, in wrongfully confiscating its rights and property and disposing of them to Venezuela for said indemnity fund, as alleged in its bill; and plaintiff further says that as soon as it was able to raise the necessary funds it employed counsel and has otherwise proceeded with all diligence to prosecute its claims in and to said indemnity fund.

23 Wherefore plaintiff prays:

1. That process issue requiring the defendants hereinbefore mentioned to appear and answer the exigencies of this bill, but not upon oath, answer upon oath being expressly waived.

2. That the court declare the said indemnity fund of $385,000.00 and each and every instalment thereof, as same is paid into the Treasury of the United States pursuant to said protocol of September 9, 1909, between the United States and Venezuela, to be subject to a trust ex maleficio for the benefit of petitioner, to the extent of its expenditures and losses as above shown under its said contract of July 22, 1897, with said Orinoco Company, as amended and affirmed, and of the damages sustained by it as above set forth, and that plaintiff has a prior equitable lien upon said indemnity fund and each and every instalment thereof for the amount of its losses and damages as aforesaid and is entitled to payment of its said claim in full out of said fund prior to the payment of any other claim.

3. That a receiver be appointed by this court to receive said indemnity fund and each instalment thereof and to dispose of the same as this court may on final hearing determine.

4. That an injunction pendente Lite may issue enjoining the defendant McAdoo, Secretary of the Treasury, and the defendant Burke, Treasurer of the United States, from issuing or cashing any warrant for any portion of said indemnity fund which may come into their hands, except to pay the same over to the receiver appointed by the Court in this cause; and that upon final hearing said injunction be made permanent.

5. That an injunction pendente lite may issue enjoining and restraining the several individual defendants, their agents and attorneys, and the several defendant corporations, their officers, agents and attorneys, and each and every of them, from receiving from the Secretary of the Treasury or the Treasurer of the United States, or
from any other source, any moneys from said indemnity
24 fund or any Treasury warrant or order of that character for
payment of money from such indemnity fund, and from presenting for payment anywhere in the District of Columbia or elsewhere any such Treasury warrant or order of the United States for the payment of any money out of said fund, and from in any manner interfering with the possession of said fund or any instalment thereof either by the Secretary of the Treasury or the Treasurer of the United States or other officer thereof, or which may come into the hands of the receiver of this court.

6. That the court order an accounting of the plaintiff's losses and damages and that the said fund be applied to payment thereof.

7. That such other and further relief may be granted plaintiff as the exigencies of its case may require and to the court shall seem meet and just.

THE ORINOCO IRON COMPANY,
By WILLIAM R. HARR,
EDWARD S. DUVALL, JR.,
Its Attorneys.

WILLIAM R. HARR,
EDWARD S. DUVALL, JR.,
Attorneys for the Orinoco Iron Co.

25 DISTRICT OF COLUMBIA, *ss:*

William R. Harr, being duly sworn, deposes and says: That the Orinoco Iron Company, Plaintiff in the above entitled cause, is a non-resident of the District of Columbia; that he has read the foregoing bill by him subscribed as attorney for said company, and that the matters and things stated therein are true, as he verily believes.

WILLIAM R. HARR.

Subscribed and sworn to before me this 10" day of November, 1914.

[SEAL.]

J. R. YOUNG,
Clk.,
By F. E. CUNNINGHAM,
Asst. Clk.

26 EXHIBIT "A."

Protocol of Settlement Between the United States of America, on Behalf of the Orinoco Corporation and of Its Predecessors in Interest, the Manca Company, Limited, the Orinoco Company, and the Orinoco Company, Limited, and the United States of Venezuela, Signed at Caracas, Venezuela, September 9, 1909.

The United States of America and the United States of Venezuela, through their representatives, William W. Russell, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and General Juan Pietri, Minister for Foreign Affairs of the United States of Venezuela, duly authorized by their respective Governments, have agreed upon and signed the following Protocol of Settlement:

Whereas, under a certain Protocol between the United States of America and the United States of Venezuela for the decision and adjustment of certain claims, signed at Caracas on the 13th day of February, 1909, it was agreed that the claim of the Orinoco Corporation and of its predecessors in interest, the Manca Company Limited, the Orinoco Company and the Orinoco Company Limited, against the United States of Venezuela should be submitted to the jurisdiction of three arbitrators to be chosen from the Permanent Court at The Hague, created at the Second Peace Conference, held at The Hague, in 1907, the claimant company fixing the value of said claim at one million seven hundred and fifty thousand dollars ($1,750,000.00); and

Whereas, the respective Governments, animated by the spirit of sincere friendship that has always existed and should exist between the two Nations, and actuated by the firmest desire to maintain and continue the good understanding which should exist and in-
27 crease between them, and to the end of avoiding all possible future differences regarding this matter and of adjusting existing differences concerning said claim by common accord, instead of further proceedings under said Protocol, and in pursuance of the express provision of Article XII of said Protocol, as heretofore extended by the joint agreement of the said Governments, have now reached an amicable arrangement and adjustment of the said claim and have agreed to and do adjust the same in the manner and form hereinafter stated.

First. The United States of America, on behalf of the Manca Company Limited, the Orinoco Company, the Orinoco Company Limited, and the Orinoco Corporation, hereby releases to the United States of Venezuela forever all the right, title and interest of the Manca Company Limited, the Orinoco Company, the Orinoco Company Limited, and the Orinoco Corporation, in and to the following described property:

The concession granted by the Government of the said the United States of Venezuela unto Cyrenius C. Fitzgerald, under date of Sep-

tember 22, 1883, which concession was afterwards transferred and assigned by said Fitzgerald unto the said the Manca Company Limited, and by that company to the said the Orinoco Company, and by that company to the said the Orinoco Company Limited, and by that company to the said the Orinoco Corporation, including all the rights, privileges, benefits, and immunities which are, or have ever been, claimed by said Fitzgerald and said several companies, or by any, or either of them, in or to the aforesaid premises or concession, or any part or parcel thereof, or to the deposits or mines of iron, asphalt, gold or other minerals or substances of whatever description within the limits of said concession, as well as the administration, saw-mill, and other buildings, and all machinery and other personal property now on said concession belonging to said companies, or either or any of them.

28 And the said United States of America, on behalf of said companies, and of each and every of them, respectively, waives in favor of the said the United States of Venezuela, all and singular, the claims and demands of the said companies, and of each and every of them which they, or either, or any of them, or the said the United States of America, on their behalf, have made or might make against the said the United States of Venezuela, originating out of, or in any way connected with, or appertaining to said concession, or to the rights, privileges, benefits and immunities thereby granted or conceded or growing out of the alleged seizure and destruction of the steamer the "Perla" by the military forces of the said the United States of Venezuela, and from all and singular the other claims and demands, if any, which might be made in behalf of said companies, or any, or either of them, which they or any, or either of them, or the said the United States of America, in their behalf, have made or might make against the said the United States of Venezuela, on any account whatever.

Second. In consideration of the promises, and in conpensation for the above-mentioned waiver, the United States of Venezuela covenants, promises and agrees to pay to the United States of America therefor the sum of three hundred and eighty-five thousand dollars ($385,000.00), in gold coin of the United States of America, of the present standard of weight and fineness, at the Office of the Secretary of State, Washington, D. C., in the United States of America, in eight (8) equal instalments at the following times, namely:

1. The first payment of forty-eight thousand one hundred and twenty-five dollars ($48,125.00) to be made the day following that on which this Protocol is approved by the Federal Executive of the United States of Venezuela.

2. The second payment of the same amount to be made one year from the date hereof, at the same place, and thereafter the third, fourth, fifth, sixth, seventh and eighth payments to be made annually, of the same amounts, one year apart, at the same place.

29 Third. By virtue of the present agreement the United States of America, in the name of the Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, declare

themselves to be fully paid and satisfied for all claims of The Orinoco Corporation and of its predecessors in interest, The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited, against Venezuela; and the United States of Venezuela declares itself to be fully paid and satisfied for all claims of the United States of Venezuela against the Orinoco Corporation and its predecessors in interest. The Manoa Company Limited, The Orinoco Company and The Orinoco Company Limited.

In witness whereof the undersigned have hereunto set their hands and seals this ninth day of September, one thousand nine hundred and nine.

PIETRI. [SEAL.]

WILLIAM W. RUSSELL. [SEAL.]

EXHIBIT "B."

The Minister of Fomento of the United States of Venezuela duly authorized by the President of the Republic, of the one part, and Cyrenius C. Fitzgerald, citizen of the Federal Territory Yuruary, of the other art, have concluded the following contract:

Article I. The Government of the Republic concedes to Fitzgerald, his associates, assigns and successors, for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

(1) The Island of Pedernales, situated to the south of the Gulf of Peria, and formed by the Gulf and the Pedernales and Cucuina streams.

(2) The territory from the mouth of Araguao, the shore of the Atlantic ocean, the water above the Greater Araguao to where it is joined by the Araguaito stream; from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco surrounding the Island of Tortela, which will form part of the territories conceded to the junction of the José stream with the Piacca from this point following the waters of the José stream to its source; thence in straight line to the summit from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guiana; from this limit and along it toward the north to the shore of the Atlantic Ocean, and lastly from the point indicated the shore of the Atlantic Ocean to the
31 mouth of the Araguao, including the island of this name and the other intermediate or situate in the Delta of the Orinoco, and in contiguity with the shore of the said ocean. Moreover and for an equal term, the exclusive right of establishing a Colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle; and all other industries and manufactures which may be considered suitable

setting up for the purpose machinery for working the raw material, and exploiting and developing to the utmost the resources of the Colony.

Article II. The Government of the Republic grant to the contractor, his associates, assigns and successors, for the term expressed in the preceding article, the right of introduction of houses or iron or wood, with all their accessories, and of tools and other utensils, chemical ingredients and productions which the necessities of the Colony may require; the use of machinery, the cultivation of industries and the organization and development of those undertakings which may be formed either by individuals or by companies which are accessory to or directly depending on the Contractor or Colonization Company; the exportation of all the products, natural and industrial, of the Colony; free navigation exempt from all national or local taxes, of rivers, streams, lakes and lagoons comprised in the concession, or which are naturally connected with it; moreover the right of navigating the Orinoco, its tributaries and streams, in sailing vessels or streamships, for the transportation of seeds to the Colony, for the purpose of agriculture, and cattle and other animals for the purpose of food and development of breeding; and, lastly, free traffic
32 of the Orinoco, its streams, and tributaries, for the vessels of the Colony entering it and preceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the Colony to another.

Article III. The Government of the Republic will establish two ports of entry at such points of the Colony as may be judged suitable in conformity, with the Treasury code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the Colony in which it is destined and load and unload according to the formalities of the law.

Article IV. A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the Colony.

Article V. Cyrenius C. Fitzgerald, his associates, assigns or successors, are bound:

(1) To commence the works of colonization within six months, counting from the date when this contract is approved by the Federal Council in conformity with the law.

(2) To respect all private properties comprehended within the boundaries of the concession.

(3) To place no obstacle of any nature in the navigation of the rivers, streams, lakes and lagoons, which shall be free to all.

(4) To pay 50,000 Bolivars in coin for every 46,000 Kilo-
33 grammes of Sarrapia and Cauche which may be gathered or exported from the Colony.

(5) To establish a system of immigration which shall be increased in proportion to the growth of the industries.

(6) To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

(7) To open out and establish such ways of communication as may be necessary.

(8) To arrange that the Company of Colonization shall formulate its statutes and establish its management in conformity with the laws of Venezuela, and submit the same to the approbation of the Federal Executive, which shall promulgate them.

Article VI. The other industrial productions on which the law may impose transit duties shall pay those in the form duly prescribed.

Article VII. The natural and industrial productions of the Colony, distinct, from those expressed in the Article 5, and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

Article VIII. The Government of the Republic will organize the political, administrative and judicial system of the Colony, also such an armed body of police as the Contractor or Company shall judge to be indispensable for the maintenance of the public order. The expense of the body of police to be borne by the Contractor.

Article IX. The Government of the Republic, for the term
34 of twenty years, counting from the date of this contract, exempts the citizens of the Colony from military service, and from payment of imposts or taxes, local or national, on those industries which they may engage in.

Article X. The Government of the Republic, if in its judgment it shall be necessary, shall grant to the Contractor, his associates, assigns, or successors, a further extension, of six months for commencing the works of colonization.

Article XI. Any question or controversies which may arise out of this Contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, 22nd September, 1883.

Senor Heriberto Gordon signs this as attorney of Senor Cyrenius C. Fitzgerald, according to the power of attorney a certified copy of which is annexed to this document.

[Seal of the Ministry of Fomento.]

M. CARABANO,
Minister of Fomento.
HERIBERTO GORDON.

Approved by the Federal Council Sept. 22, 1883; by the Congress, May 23, 1884; by the President, May 27th. 1884—(Official Gazette, No. 3257; Vol. XI. Venezuelan Laws, p. 98.)

35 EXHIBIT "C."

Notice of Proposed Distribution of the Moneys Received from the United States of Venezuela by Virtue of the Protocol of September 9, 1909. Arranging for the Settlement of the Claims of the Orinoco Corporation and Its Predecessors in Interest, the Manoa Company, Limited, the Orinoco Company, and the Orinoco Company, Limited, Against the Republic of Venezuela.

By a Protocol of Settlement dated September 9, 1909, Venezuela agreed to pay to the United States on behalf of the Orinoco Corporation and its predecessors in interest, the Manoa Company, Limited, the Orinoco Company and the Orinoco Company, Limited, $385,000.00, in eight annual instalments. By an exchange of diplomatic notes at the time of the protocol, it was agreed that the United States, out of the sum received, should pay to the defendant attorneys in a suit brought in 1905, by one Padron Ustariz against the Manoa Company, Limited, and the Orinoco Company, Limited, a reasonable compensation for their services then rendered. The first instalment of the indemnity of $48,125.00 was paid in September, 1909, and the second in September, 1910, and both have been covered into the Treasury of the United States.

The four beneficiaries named in the protocol, to wit, the Manoa Company, Limited, the Orinoco Company, the Orinoco Company, Limited, and the Orinoco Corporation and the representative of the defendant attorneys have taken the following action:

The Manoa Company, Limited, and the Orinoco Company have assigned their rights or claims to the indemnity fund to the Orinoco Corporation represented by its duly appointed and qualified Trustee in Bankruptcy. The Receiver of the Orinoco Company, Limited, the Trustee in Bankruptcy of the Orinoco Corporation and
36 the representatives of the defendant attorneys have entered into an agreement assenting that the fund shall be distributed as follows: To the defendant attorneys the sum of $8,000; to the Receiver of the Orinoco Company Limited, the sum of $75,000 and to the Trustee in Bankruptcy of the Orinoco Corporation the residue of the fund, to be received in proportionate instalments as the fund shall be paid in from time to time to the Treasury of the United States and distributed accordingly. This agreement has been approved by the District Court of Minnesota for Rice County as supervising the insolvency proceedings of the Orinoco Company, Limited, and by the District Court of the United States for the Southern District of Ohio, Western Division in the bankruptcy proceedings of the Orinoco Corporation. The total amount to be distributed to the companies, however, is subject to a deduction on account of the expenses incurred by the Government of the United States in the settlement of the claim, to wit, $6,563.33.

To the end that persons claiming as stockholders or creditors of the various companies, whose claims are not cognizable by the Department of State, may take such steps as they may be advised in

the premises, notice is hereby given that ten days from date direction will be made for a distribution as indicated above of the portion of the fund now on deposit in the Treasury of the United States.

Department of State, Washington, June 20, 1911.

37 EXHIBIT "D."

This indenture, made and entered into this 22d day of July, A. D. One Thousand Eight Hundred and Ninety-Seven, by and between the Orinoco Company, Limited (hereinafter called the Orinoco Company), a corporation created, organized and existing under and by virtue of the laws of the State of Wisconsin, in the United States of America, and the Orinoco Iron Company (hereinafter called the Iron Company), a corporation created, organized and existing under and by virtue of the laws of the State of West Virginia, in the United States of America,

Witnesseth as follows:

That whereas the said Orinoco Company has and holds from the Government of the Republic of Venezuela, on the Continent of South America, a grant and concession embracing a large tract of lands, with all the resources thereof, aggregating approximately seven millions of acres, for a period of ninety-nine years from September 22d, 1883, originally known as the Fitzgerald Grant or Orinoco Concession, which grant and concession has been in all respects duly confirmed and established in said Orinoco Company, Limited; the same generally extending from the mouth of the Orinoco River up said river for a distance of about 120 miles, and lying partly upon each side of said river, varying in width from about 60 to 100 miles; and,

Whereas from examinations heretofore made it is believed that large and valuable deposits of iron ore exist therein, more particularly in the vicinity of Santa Catalina, on the southerly side of the said Orinoco River and in close proximity thereto, which can be loaded at landings upon the said river and transported down the same and to Atlantic seaports; and,

38 Whereas the said Orinoco Company is desirous of having the said iron fields exploited, developed and operated to the fullest extent practicable, and, resulting from negotiations heretofore had, the said Iron Company has been formed for that purpose; and,

Whereas under the terms and conditions of said grant and concession and the laws of the said Republic of Venezuela all exports of industrial products from concession are exempted from export duty, and are also exempt for the period of twenty years from the date of said concession from all taxation for national and local purposes:

Now therefore, in consideration of the covenants and agreements hereinafter contained, and the things to be done and performed by

the said Iron Company, and in consideration of the sum of One Dollar, lawful money of the United States, to the said Orinoco Company in hand paid by said Iron Company, the receipt of which is hereby acknowledged, the said Orinoco Company hereby grants and confirms unto the said Iron Company, its successors and assigns, upon the conditions hereinafter set forth, the exclusive right, license, privilege and option, by itself, its agents, servants, employees, contractors, sub-contractors, lessees and sub-lessees, to enter upon the said premises and any of the lands upon said concession, for the purpose of exploring for, mining, removing and shipping any and all deposits of iron ore that may be found to exist in, upon or under any and all of said lands during the life and period of the said concession and of the said grant under and by which the said Orinoco Company holds the same.

The said grant, right and license is hereby made and given upon the condition that said Iron Company shall as soon as practicable and within six months from this date select for the first
39 operations upon said concession a location or territory deemed by it, with the advice and information of the said Orinoco Company, most feasible and practicable for such operations, and enter upon the same with a competent engineer or engineers and reasonable force of men, with such tools, implements and machinery as said Iron Company may deem most advisable and practicable, for the purpose of exploring for said iron deposits and determining the location and extent thereof; which exploration work shall be carried forward without unreasonable cessation until sufficient deposits of iron ore shall be found to exist to warrant the commencement of shipments therefrom, or until the grant and license hereby made shall be terminated in the manner hereinafter provided.

That if by such exploration and development work it be determined that sufficient bodies or deposits of merchantable iron ore exist in, upon or under said premises to warrant the construction and establishment of facilities for mining and shipping the same, that the said Iron Company shall on or before July 1st, 1898, equip itself for the mining and shipping of said ores, either by itself or by and through the aid of other persons, associations or corporations, and shall, on or before July 1st, 1899, mine, ship and remove from said concession not less than five hundred thousand gross tons of 2,240 pounds each of such iron ore; and shall mine, remove and ship from said concession not less than a like amount of five hundred thousand gross tons during the year next succeeding; and shall mine, remove and ship from said concession thereafter during the life of said grant as much of such merchantable iron ore, and shall operate the mines upon said concession that may be under this grant and license discovered and developed to as full an extent as the conditions of the trade and the conditions of the mines and transportation facilities will warrant, and not less than five
40 hundred thousand gross tons annually in any event, except under the conditions hereinafter set forth.

That the said Iron Company shall pay to the said Orinoco Com-

pany, its successors or assigns, a royalty of five cents per gross ton upon all of the merchantable iron ore mined, removed and shipped from said concession under this contract up to July 1st, 1899, and a royalty of ten cents per gross ton upon all of the merchantable iron ore mined, removed and shipped from said concessions under this contract during the year from July 1st, 1899, to July 1st, 1900, and a royalty upon all of the merchantable iron ore thereafter mined, removed and shipped under this contract from said concession of twelve and one-half cents per gross ton. Said royalties to become due and payable on the first days of January and July of each year during the life of this grant and license for all of the merchantable iron ore thus mined, removed and shipped from said concession during the six months next preceding. Said Iron Company, however, to have thirty days after the said payments become due in which to remit for the same, said thirty days being allowed for the purpose of enabling proper accounts and reports to be made up, and for the transmission of such payments. Such payments to be made at some banking house or place of payment in the City of New York or elsewhere, reasonable convenient, to be designated by the said Orinoco Company; and such place of payment may be changed from time to time by the said Orinoco Company, reasonable and timely notice of such change being given in writing by the said last named Company. And it shall be deemed a sufficient and timely payment of such royalties if valid drafts, payable on demand or at sight, which are duly honored and paid in due course of business, or legal tenders therefor, are transmitted to the said Orinoco Company, its
41 successors or assigns, by the said Iron Company, by the usual methods and facilities open for such transmission, within said period of thirty days.

It is agreed that if in any year during the life of this grant the said Iron Company shall fail to mine and ship the amounts of ore herein provided to be mined and shipped, it shall not render the grants herein contained subject to forfeiture, or subject the said Iron Company to the prosecution of any action on that account, if it shall nevertheless pay to the said Orinoco Company or its successors or assigns a sum of money equal to the royalty upon the minimum amount of iron ore hereinbefore stipulated to be mined and shipped during such year. Provided, further, that if more iron ore is thus paid for during any one year that is mined and shipped from said concessions, the same may be mined and removed in any subsequent year or years without additional payment therefor after the minimum amount provided to be mined during such year or years shall have been mined and shipped.

It is further made one of the conditions of this grant and license that the said Iron Company shall at all reasonable times provided for and permit the said Orinoco Company, by its duly authorized agents and employees, to have access to the mining operations of the said Iron Company, and of all persons, companies or corporations acting by, through or under it, and to its and their shipping records, for the purpose of informing itself of the extent and results of said explorations, developments and mining operations, and for the purpose

of ascertaining and verifying the amount of the output and of the shipments of such iron ore. And the said Iron Company shall make monthly reports to the said Orinoco Company of the amount
42 of iron ore shipped from the said concession during the life of this grant.

It is understood that the term "merchantable ore" as used in this contract shall be interpreted to mean iron ore that shall average sixty-five per cent metallic iron, sufficiently low in phosphorus and other ingredients to maintain the limit and standard of Bessemer ore. All iron ores, outside of the ores that average of a marchantable quality, and that are not "merchantable" within the definition thereof hereinbefore contained, which may be mined, removed and shipped by said Iron Company under this contract, shall be reported to and accounted for by said Iron Company, its successors and assigns, to said Orinoco Company, its successors and assigns, and the said Iron Company shall pay as royalty upon all such non-merchantable ores so mined, removed and shipped such sum per ton as is fairly in proportion to its market value as compared with the market value of such merchantable ores; but said Iron Company shall report such non-merchantable ore sold by it in the market at a less price than the market value of such merchantable ore separately in such manner as not to reduce the royalty to be paid for such merchantable ore.

It is further agreed that while this agreement is in force and effect between the parties hereto, the said Orinoco Company will not grant to any other person, company or corporation, any right, privileges or license to enter upon its concession for the purposes of exploring for, mining and shipping iron ore therefrom, nor itself engage therein, except it be in co-operation with the said Iron Company, so long as the terms, provisions and conditions of this agreement are duly kept and performed by the said Iron Company; it being the intendment hereof to grant and assure to the
43 said Iron Company, its successors and assigns, the exclusive right to open up, develop and operate iron mines upon the said concession so long as the conditions of this contract are duly and in good faith kept and performed, and to assure to the said Iron Company, its successors and assigns, the protection which the said Orinoco Company enjoys from the said Government and the benefit of the exemptions and immunities of its said concession so far as relates to the operation and products of such mines.

It is further agreed, and all of the provisions of this instrument are to be construed together to arrive at its true intendment, that in case at any time during the life of this agreement, by reason of depression in the iron ore trade or the force of competition in the markets, or by reason of labor strikes or difficulties, pestilence, epidemics or insurrections, it becomes impossible for the said Iron Company to carry on the mining and shipment of iron ore from said concession without serious loss, then in such case, upon such condition being reasonably proven to said Orinoco Company to exist, during such time the obligation to mine and ship such ore shall be suspended by the said Orinoco Company until such time as the conditions assume their normal state or become such as to admit of the

prosecution of said enterprise consistent with prudent business principles; and the requirements for output of such year or years as shall embrace said periods shall be suspended or modified to such extent as said Iron Company shall have been deterred by said causes or any thereof from the prosecution of its business.

The right to use such timber upon the said premises for the purpose of carrying on said work of exploration, development, mining
44 and shipping as may be necessary for the construction of drains, shafts, tramways, roads, bridges, railroads, docks, landings, wharves, and timbering or staying mines, or for other use incident to said mining operations, is hereby granted to the said Iron Company and those acting by, through and under it during the life of this instrument, except that it shall not take or use woods of great commercial value, such as mahogany, redwood, cedar, balata and similar woods, and may also make reasonable use of any stream of water that may be necessary or convenient to further said mining operations.

It is further agreed that the said Orinoco Company, in granting rights and privileges to other persons and corporations and in disposing of its lands while this agreement is in force, shall reserve all iron ores and the right to mine and remove the same (so as not to create a conflict of rights), and covenants that it has hitherto done so; and said Iron Company shall so exercise the rights and privileges herein granted as not to unnecessarily interfere and conflict with the said Orinoco Company or those claiming under it in the enjoyment of rights and privileges not embraced in this contract.

It is further agreed, and this instrument is made upon the condition that the said Iron Company may terminate this contract and all obligations thereunder at any time upon giving ninety days' notice in writing personally or by mail to the said Orinoco Company, addressed to or delivered to it at its principal place of business or at any place where it regularly maintains an office for the transaction of its business, upon the discharge and payment of all sums, indebtedness and obligations at that time due and owing from the said Iron Company to the said Orinoco Company.

45 It is further agreed, and all of the rights herein granted are granted upon the express condition, that in case the said Iron Company, its successors or assigns, shall default in the performance of any of the conditions, covenants or agreements of this instrument to be kept or performed by it or them, and such default shall continue for a period of ninety days, then and thereupon the said Orinoco Company may at its option terminate this agreement and all rights, privileges, licenses and immunities thereunder by notice in writing to the said Iron Company, its successors or assigns, served either personally or by mail at the principal place of business of said Iron Company or at any office of said Company regularly maintained for the transaction of business. And the said Orinoco Company shall at all times have a lien, enforcible in any Court having jurisdiction of the parties and subject-matter, upon all and singular the property of the said Iron Company, its successors and assigns, upon said concession, for any and all sums of money due or owing from said Iron

Company, its successors, or assigns, to the said Orinoco Company, its successors or assigns.

It is further agreed that upon the termination of this contract and all rights herein granted, the said Iron Company shall have a reasonable time, not exceeding six months to remove its machinery, tools and other property from the said concession, and for that purpose shall have the right to enter upon the premises theretofore occupied by it; but in so removing the same it shall not otherwise interfere with the enjoyment and possession by the said Orinoco Company of its premises, nor shall it remove the same in such manner as to injure the mines or property of the said Orinoco Company.

Said Orinoco Company, its successors and assigns, shall upon the reasonable request of said Iron Company, its successors or as-
46 signs, issue such duly attested certificates of authority to said Iron Company, its successors or assigns, its and their agents and employes, as will evidence to all persons its and their rights to explore for, mine, remove and ship iron ore from said concession, and to enjoy all the benefits and immunities of said Orinoco Company relative to the said industry and enterprise.

The term "concession" as used in this instrument shall be held to mean and embrace all or so much of the grant or concession known as the "Fitzgerald," "Manca" or "Orinoco" concession as has been or hereafter at any time shall be confirmed in said Orinoco Company, Limited, its successors or assigns, and finally determined to be within the boundaries of said concession, and said Orinoco Company covenants that it will from time to time execute any further instruments that may be necessary, when mines are definitely located, to assure to said Iron Company, its successors and assigns, the tenure thereof under the terms, provisions and conditions of this contract.

This contract shall be deemed to be made in the state of New York, in the United States of America, and construed and interpreted as if to be performed therein, in accordance with the laws of said State, for the purpose of ascertaining the intention of the parties hereto and their respective rights hereunder.

Upon the acceptance in writing by the said Iron Company of this instrument and the grants herein contained and the terms and conditions hereof, this instrument shall be and become binding and of full force upon the respective parties hereto and their re-
47 spective successors and assigns.

In testimony whereof the Orinoco Company Limited has caused its corporate name and seal to be hereunto affixed by its President and this instrument to be attested by its Secretary this twenty-second day of July, A. D. 1897.

ORINOCO COMPANY, LIMITED,
(Corporate Seal.) By A. C. ROGERS, *President, and*
GEO. N. BAXTER, *Its Secretary.*

In present- of:
T. B. CLEMENT. [SEAL.]
J. L. WASHBURN. [SEAL.]

(Here follow all the necessary certificates as to the legality of the foregoing instrument.)

48 EXHIBIT E.

This indenture, made and entered into this 5th day of August, A. D. One thousand eight hundred and ninety-nine, by and between the Orinoco Company, Limited (hereinafter called the Orinoco Company, a corporation created, organized and existing under and by virtue of the laws of the State of Wisconsin, in the United States of America, and the Orinoco Iron Company (hereinafter called the Iron Company) a corporation created, organized and existing under and by virtue of the laws of the State of West Virginia, in the United States of America,

Witnesseth as follows:

That the contract bearing date July 22nd 1897, heretofore entered into by and between said Companies for the exploitation by said Iron Company of the iron ores upon the concession of the said Orinoco Company, be and the same is hereby amended so as to provide as follows:

That said Iron Company shall be required to commence the operations of mining and shipping ore under said contract on or before July 1st, 1899, and to mine, remove and ship from said concession, on or before July 1st, 1900, not less than five hundred thousand gross tons of 2,240 pounds each of such iron ore, and to mine, remove and ship therefrom annually thereafter during the life of said contract the tonnages and amounts of iron ore which said Iron Company is required to mine, remove and ship therefrom in accordance with and subject to the terms and provisions of said contract.

That all previous modifications of said contract of July 22nd 1897, proposed, negotiated or agreed to, be and the same are hereby abrogated and rescinded, and said contract of July 22nd, 1897, as amended thereby be *and* in all respects confirmed as the existing contract between these companies; provided however, that this modification and amendment shall operate as an accord and satis-
49 faction of all existing claims and demands, if any there be, by either of said Companies against the other.

In testimony whereof the said Orinoco Company Limited has caused its corporate name and seal to be hereunto affixed, and this instrument has been signed by its President and countersigned by its Secretary this 5th day of August 1899, pursuant to a resolution of its Board of Directors of date July 26th, 1899, and the said Orinoco Iron Company has caused its corporate name and seal to be hereunto affixed, and this instrument to be signed by its President and countersigned by its Treasurer and attested by its Secretary, this 22nd day of August, 1899, pursuant to a resolution of its Board of Directors of date August 16th, 1899.

ORINOCO COMPANY, LIMITED,
By A. C. ROGERS,
Its President.

Countersigned:
H. T. KYLE,
Its Secretary.

Attest:

(Seal Orinoco Company, Ltd.)

H. T. KYLE,
Secretary.

ORINOCO IRON COMPANY,
By A. B. REEDER,
Its President.

Countersigned:
FRANKLIN A. WEBSTER,
Its Treasurer.

Attest:

(Seal Orinoco Company.)

A. C. IVISON,
Its Secretary.

In presence of:
BENONI LOCKWOOD, JR.

(Here follow all the necessary certificates as to the legality of the foregoing instrument.)

50 *Order Directing Entry of Minute of Proceedings on November 21, 1914.*

Filed November 30, 1914.

* * * * * * *

On this 30th day of November, 1914, it is ordered by the Court that the following minute of the proceedings in this case on November 21, 1914, be entered, nunc pro tunc:

On the 21st day of November, 1914, the return day of the rule to show cause and of the restraining orders theretofore issued herein, the plaintiff appeared by its attorney Edward S. Duvall, Jr., who stated to the court that since the issuance of said rule to show cause and restraining orders he and his associate, William R. Harr, had been served with notice and copies of an order from the United States District Court for the Southern District of Ohio, Western Division, enjoining plaintiff and its attorneys from proceeding further with the prosecution of this cause, and directing them to dismiss the same, said injunction order purporting to have been made by said United States District Court upon the application of Harry V. Metzel, trustee in bankruptcy of the Orinoco Corporation, appointed by said United States District Court, and who is named as a defendant in this cause; plaintiff's attorney further stated that they were advised that said injunction order had been improvidently issued, but out of respect for said United States District Court felt that they should not proceed further in this cause until they had taken appropriate steps to have said order set aside, which they were proceeding promptly to

do; whereupon, no appearance being made by any of the parties named as defendants herein, except that counsel for the defendants Safford and Fitzgerald appeared for the purpose of their motion to quash the service made upon their clients, the court of its own motion continued the hearing upon said rule and restraining orders until further order of the court.

WALTER I. McCOY,
Justice.

51 *Motion to Dismiss Bill of Complaint.*

Filed December 18, 1914.

* * * * * * *

The defendants, William G. McAdoo, Secretary of the Treasury and John Burke, Treasurer of the United States, by the Attorney of the United States for the District of Columbia, move the court to dismiss the bill of complaint herein and for cause therefor say as follows:

1. It appears on the face of the bill that the suit is virtually and in effect a suit against the United States.

2. It appears upon the face of the bill that the plaintiff seeks to secure a review of the action of the Secretary of State in matters involving his judgment and discretion, and upon which he is, by statute, solely authorized to decide.

3. It appears by the bill that the title asserted by the complainant is adverse to that of the beneficiaries nominated by the findings of the Secretary of State.

4. That it appears by the bill that the defendants other than these defendants are not within the jurisdiction of the court, and that there is no property having a situs in the District of Columbia against which the plaintiff may proceed.

5. It appears by the bill of complaint that the plaintiff is guilty of laches in presenting his claim and that the same is stale.

6. It appears by the record and proceedings herein that the United States District Court for the Southern District of Ohio first acquired jurisdiction of the subject matter; that the plaintiff invoked the jurisdiction of that Court and that this proceeding is
52 an unlawful interference therewith.

JOHN E. LASKEY,
United States Attorney, D. C.

Order for Appearance of Absent Defendants.

Filed June 15, 1917.

* * * * * * *

The object of this suit is to establish and enforce plaintiff's paramount equitable right and claim to a certain portion, to wit, $56,250.00, of a fund in the U. S. Treasury, designated Orinoco

Indemnity Fund, paid to the United States by Venezuela pursuant to Protocol of September 9, 1909, and claimed by one John W. Le Crone as receiver for The Orinoco Company, Ltd., and to enjoin payment, or delivery of any warrant therefor, to said Le Crone or others, parties to a certain cause depending in this court and entitled William M. Safford, plaintiff, vs. Wm. G. McAdoo, Secretary etc., et al., defendants, Equity No. 30289, wherein the court has sequestered the aforesaid portion of said fund.

On motion of the plaintiff, it is this 15th day of June, 1917, ordered that the defendants William M. Safford, The Orinoco Company, Limited, The Manoa Company, Limited, The Orinoco Company, George E. Fitzgerald, individually and as Administrator of Estate of Cyrenius C. Fitzgerald, dec'd, John W. Le Crone, receiver of The Orinoco Company, Ltd., Harold H. Verge and James A. Radcliffe cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays,
53 occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter, and the Washington Post before said day.

WENDELL P. STAFFORD,
Justice.

Order.

Filed June 15, 1917.

* * * * * * *

This cause coming on to be heard on the motion of defendants, William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, filed herein on November 28, 1914, to stay the proceedings in this cause, and further to be heard on the motion of the said defendants, filed herein December 18, 1914, to dismiss the bill of complaint, it is this 15th day of June, 1917,

By the Court, ordered, adjudged, and decreed, that the said motions, (1) to stay the proceedings in this cause, and (2) to dismiss the bill of complaint, be, and they hereby are, overruled, with leave to said defendants, the Secretary of the Treasury, and the Treasurer of the United States, to answer in twenty days from the date of this order.

WENDELL P. STAFFORD,
Justice.

54 *Memorandum.*

June 19, 1917.—Affidavit as to non-residence of certain defendants, filed.

Motion to Quash Service and Vacate Order of Publication.

Filed July 17, 1917.

* * * * * * *

Now come McLanahan & Burton, appearing specially for the pu pose of this motion only, and for no other purpose, for John W. L Crone, as receiver of the Orinoco Company, Limited, one of th defendants in the above entitled cause, and move the Court to quas the attempted service of process by publication upon said defendan Le Crone, as receiver, and to vacate the order of publication entere in said cause on June 15th, 1917 as to said defendant, Le Cron as receiver; upon grounds that said defendant is not a resident of th District of Columbia, and that the order of publication and publica tion of notice in this cause are wholly insufficient as to said defen ant, for the reason that there is no real or personal property withi the jurisdiction of this Court to or against which it is sought t enforce or establish any lawful right, claim or demand.

McLANAHAN & BURTON,
Attorneys, for the Purpose of the Above Motion Only, for John W. Le Crone, Receiver of the Orinoco Company, Limited.

55 Messrs. W. R. Harr and Edward S. Duvall, Jr.,
Attorneys for plaintiff:

Please take notice that on Friday, the 20th day of July, A. D 1917, at ten o'clock A. M., or as soon thereafter as counsel can b heard, the above motion will be presented to the Court for its actio

McLANAHAN & BURTON,
Attorneys pro hac vice John W. Le Crone, Receiver of the Orinoco Company, Limited.

Receipt of a copy of foregoing on this 17th day of July, A. D 1917, acknowledged.

EDWARD S. DUVALL,
Attorney for Plaintiff.

Answer of the Orinoco Company, Limited.

Filed July 24, 1917.

* * * * * * *

Now comes the Orinoco Company Limited and for its Answer t plaintiff's Bill, says:

I. That the attempted service of original process upon it by pub lication of the Order requiring it to cause its appearance to be entere herein, is insufficient to give this Court jurisdiction to hear and d

termine the matters alleged against it in said Bill; and it prays judgment whether it shall further answer the same; and that upon hearing this plea, this defendant be dismissed hence.

56 II. And for a further defense (if the foregoing plea be overruled) defendant says:

As to paragraph 18: Defendant avers that each and every of the so-called representations mentioned therein, were true, or believed by it to be true, when made; that the subject matter thereof was then as well known and understood by plaintiff as by defendant; and that plaintiff did not rely thereon.

III. *As to paragraph 20:* Defendant has no knowledge as to the alleged acts of revolutionists, mentioned therein, or as to the alleged consequences thereof, nor as to whether plaintiff's therein alleged reasons for its abandonment of its operations were as stated therein; nor as to whether plaintiff was driven from the Concession; nor as to whether plaintiff had secured a market for the iron ore thereon.

Defendant avers that, as it is informed and believes, plaintiff became and was insolvent and bankrupt as early as the 1st of March 1900, and therefore abandoned its operations on said Concession as early as April 1st in that year.

Defendant alleges that it put plaintiff in full and peaceable possession of the Imitaca iron mine at Manoa on or before December 1st 1899, at an expense to defendant of over $27,000, upon plaintiff's assurance that it would forthwith proceed with its mining operations thereon and pay defendant the stipulated royalties upon the iron ore it undertook to mine thereon.

57 Defendant alleges upon its information and belief that plaintiff entered upon the performance of its contract and mined some iron ore thereon in 1899 or 1900; and that on or about May 1st 1900 its machinery, tools &c. employed by it in such exploitation were levied upon, seized and sold by its creditors, together with said ore, and that plaintiff was thereby incapacitated from performance of its contract to mine such ore and pay the stipulated royalties thereon.

IV. *As to paragraph* 21. Defendant denies that it ever requested plaintiff to advance any sum whatever to defend defendants title or possession. It admits that plaintiff expended $20,000 in the protection of its own interests in the premises, which were dependent on defendants rights and title to the said Concession; and that defendant afterwards promised to credit plaintiff that amount, upon the royalties defendant expected to receive from plaintiff under the contract of July 22 1897 and its amendment.

V. *As to paragraph 22:* Defendant has no knowledge of plaintiffs expenditures mentioned therein.

Defendant avers, upon its information and belief, that they did not exceed $75,000.

Defendants expenditures in the colonization, development and exploitation of the Concession and the protection of its rights and titles thereto exceeded the sum of $300,000; and those of the other corporations named in the Protocol of Sep. 9. 1909. as defendant is informed and believes, exceeded the sum of $300,000.

58 VI. *As to paragraph* 23: Defendant has no knowledge as to any of the matters mentioned therein.

Defendant avers, upon its information and belief, that the deposits mentioned were and are of no considerable tonnage or value.

VII. *As to paragraph* 24: Defendant alleges that as early as December 1st, 1900, plaintiff defaulted in the payment of the royalties due to defendant under said contract of July 22 and amendment; and that defendant, well knowing that plaintiff was insolvent and bankrupt and unable to perform the same, resolved to terminate the same, as it lawfully might pursuant to the stipulations thereof; and afterwards, to wit; on the 8th day of March 1901, it gave plaintiff due notice in writing, served personally and by mail addressed to plaintiff at its principal place of business and office, that defendant terminated said contract and amendment and all the rights, licenses and immunities thereunder which plaintiff ever had.

Defendant denies that it was ever ousted from the possession of said Imitaca mine by any judicial decree. It is informed and believes that one Turnbull on or about August 4th 1900 unlawfully took possession thereof and kept and retained the same until sometime in the month of December of that year.

Defendant has no knowledge that it or its representatives were ever enjoined from interfering therewith.

Defendant admits that on or about Oct. 10th, 1900, the
59 Chief Executive of Venezuela declared said Concession had been annulled.

VIII. *As to paragraph* 25: Defendant alleges, on its information and belief that plaintiff was never ready or able to proceed with the performance of said contract after April 1st, 1900, when it became insolvent and bankrupt and abandoned its operations on said Concession and never resumed the same.

IX. *As to paragraph* 26. Defendant denies that it had any fraudulent purpose in terminating said contract or desired to confiscate plaintiffs property.

Defendant never asserted title to the iron ore plaintiff had mined, nor to any of its property.

The steamer "Perla" never was plaintiff property.

Defendant avers that it was never ousted from said concession, nor from said mine, except temporarily as hereinbefore stated.

Defendant's efforts to colonize, develop and exploit the Concession were obstructed by the arbitrary acts and omissions of the Venezuelan authorities, as defendant asserted in its Memorials to Venezuela and our Department of State, which injuries to defendant were the only basis of its claims against Venezuela which were asserted in its said Memorials, and which claims were released to Venezuela by the said Protocol of Sep. 9, 1909.

60 X. *As to paragraph* 27: Defendant avers that plaintiff was never ready or able to proceed with its operations on the Concession after April 1st, 1900, when, as defendant is informed and believes, plaintiff became bankrupt and insolvent.

Defendant denies that said Protocol was intended to operate as a sale, release or extinguishment of any of the claims, rights or

interests of plaintiff in said Concession, or of plaintiffs claims for damages againsts Venezuela.

Plaintiff did not assert or pretend, as defendant is informed and believes, at any time during or before the negotiation of that Protocol (after March 8th, 1901) that it was entitled to mine the said iron deposits, nor that it was ever the owner of said Steamer (The Perla), nor did it afterwards make any claim to defendant or the Department of State U. S. A. or to any of the interested parties previous to the commencement of this action, that it had any claim on said Fund on account of such alleged rights and interests.

XI. *As to paragraph* 28: Defendant denies that plaintiff is entitled to any of said Fund or to any interest in or lien thereon; and defendant avers that it ought to be distributed to and held by the beneficiaries thereof ascertained by the Secretary of State in accordance with the order and determination by him made in the premises under date of June 20th, 1911.

61 XII. *As to paragraph* 29: Defendant admits that plaintiff presented its petition to the Secretary of State, as alleged therein, and that the same was rejected.

XIII. *As to paragraph* 30: Defendant denies that it acted in the matters mentioned therein, or in any of them, as the agent of the persons named therein, or of any or either of them; and denies that its rights, (or theirs, if any) are subordinate to the pretended rights of plaintiff in the premises.

XIV. *As to paragraph* 31: Defendant denies that plaintiff has any right in to or upon said Fund, either primordial or derivative.

XV. *As to paragraph* 33: Defendant denies that the agreement mentioned therein is in fraud of any right or interest of plaintiff.

XVI. *As to paragraph* 34: Defendant denies that the proceedings mentioned therein in the District Court of Rice County, Minnesota, were without jurisdiction or fraudulent or collusive.

XVII. *As to paragraph* 36: Defendant denies that plaintiff is entitled to invoke the jurisdiction of this Court. It denies that this Court has secured jurisdiction or lawful control of said Fund,

62 which was, as defendant is informed and believes, paid into the Treasury at the City of New York and never has been within this District.

XVIII. *As to paragraph* 37: Defendant denies, upon its information and belief, each and every of the allegations thereof. It avers that it is advised that they are untrue in fact and insufficient in law to excuse the laches of the plaintiff. Defendant avers that hitherto, to the best of its knowledge, information and belief, plaintiff never asserted in any manner that defendant was responsible to it for any of the injuries or damages alleged, and defendant in making its reclamations against Venezuela acted in ignorance of any claim now asserted against it by plaintiff in this suit.

XIX. Further answering plaintiffs Bill, defendant avers that it has faithfully kept and performed all of its agreements with plaintiff.

Defendant avers that it is not accountable to plaintiff for the alleged injuries inflicted on it by Venezuela, nor for the expendi-

tures made by plaintiff in the prosecution of its enterprise, nor for the failure of plaintiffs said venture, which promised enormous profits to Plaintiff, if successful, and the hazards of which it well understood when it entered into its said contracts with defendant.

XX. For a further answer defendant alleges;—

63 That plaintiff is justly indebted to defendant on account of the royalties which plaintiff became bound to pay it in accordance with what was stipulated in the said agreement of July 22, 1897 and its said amendment of August, 1899.

Wherefore defendant prays that this suit be, as against it, dismissed.

ORINOCO COMPANY LIMITED. [L. S.]
By GEO. N. BAXTER,
Its Secretary and Attorney-in-Fact.

GEO. N. BAXTER,
ARTHUR R. COLBURN,
Defendants' Attorney.

DISTRICT OF COLUMBIA, *ss:*

Geo. N. Baxter, being first duly sworn, deposes and says; That the Orinoco Company Limited is a corporation organized and existing under the laws of the State of Wisconsin in the United States of America, and absent from the District of Columbia. That deponent is the Secretary of said Company. The deponent (affiant) verily believes the facts stated in the foregoing pleading to be true.

GEO. N. BAXTER.

Subscribed and sworn to before me this 2d day of July, 1917.
[SEAL.] ARTHUR R. COLBURN,
Notary Public, District of Columbia.

64 *Answer of William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States.*

Filed July 27, 1917.

* * * * * * *

The defendants, William G. McAdoo, Secretary of the Treasury of the United States, and John Burke, Treasurer of the United States, reserving to themselves the benefit and advantage of all manner of objection and exception to the errors and insufficiencies of the bill of complaint, and to the jurisdiction of the Court; nevertheless, answering so much and such parts of the said bill of complaint as they are advised it is material or necessary for them to make answer unto, say as follows:

One. These defendants admit, upon information and belief, for the purposes of this suit, the allegations contained in paragraph one of the bill of complaint.

Two. These defendants admit the allegations contained in paragraph two of the bill of complaint, as to their citizenship and pres-

ent residence and that they are sued, respectively, as the Secretary of the Treasury and the Treasurer of the United States, and they admit, upon information and belief, for the purposes of this suit, the allegations as to the citizenship and residence of the other defendants named in said paragraph two of the bill of complaint.

Three, Four, Five. As to the allegations contained in paragraphs three, four, and five of the bill of complaint, these defendants set forth the account and status of the "Orinoco Corporation Indemnity Fund" as follows:

65 *Statement of Receipts Into the United States Treasury and Payments Therefrom on Account of "Claim of the Orinoco Corporation Against Venezuela" (Hereinafter called the "Orinoco Corporation Indemnity Fund").*

The protocol of settlement of the claim of the Orinoco Corporation, signed September 9, 1909, on behalf of the United States and Venezuela, provided for a payment for the benefit of the Orinoco Corporation and its three predecessors of $385,000 in eight equal installments of $48,125, payable annually.

The total amount has been paid into the Treasury as follows:

Date of warrant covering payment into U. S. Treasury.	Amount of annual payment by Venezuela.
September 30, 1909	$48,125
September 30, 1910	48,125
September 30, 1911	48,125
September 30, 1912	48,125
September 30, 1913	48,125
October 31, 1914 (Deposited October 24)	48,125
September 30, 1915	48,125
September 30, 1916	48,125
Total	$385,000

The total payments by the United States Treasury from the fund received from Venezuela have been as follows:

Date of pay warrant.	To whom paid.	Amount.
June 28, 1911	R. Dolge, Trustee, etc.	$70,263.97
do	R. Dolge, Atty, in fact for Manuel Antonio Ponce, et als.	2,000.00
Oct. 25, 1911	John W. Le Crone, Receiver, etc.	17,449.70
do	Department of State	6,536.33
Dec. 13, 1911	R. Dolge, Atty, in fact for Manuel Antonio Ponce, et als.	1,000.00
Oct. 11, 1912	Harry Metzel, Trustee, etc.	37,750.00*

*Not paid. Amount covered back into United States Treasury to credit of "Outstanding Liabilities."

Date of pay warrant.	To whom paid.	Amount.
Dec. 10, 1912.....	R. Dolge, Atty, in fact for Manuel Antonio Ponce, et als.....	1,000.00
Jan. 9, 1914.....	Manuel Antonio Ponce, et als..	1,000.00
66		
Dec. 23, 1914.....	Manuel Antonio Ponce, et als...	1,000.00
Oct. 14, 1915.....	do do ..	1,000.00
Oct. 21, 1916.....	do do ..	1,000.00
Total		$140,000.00
Balance to credit of fund July 26, 1917.....		245,000.00
		$385,000.00

The unpaid balance of the fund received from Venezuela in the Treasury as of July 26, 1917, is as follows:

Balance to credit of fund.....	$245,000.00
Add: Amount of Diplomatic Warrant No. 4455, dated Oct. 11, 1912, in favor of Harry Metzel, Trustee, etc., not delivered or paid and covered back into the Treasury to the credit of "Outstanding Liabilities" under Section 306, Revised Statutes	37,750.00
	$282,750.00

The said total of $282,750 is subject to awards made as follows:

Certificates Nos. 2385, 2474, 2476, 2487 and 2492 of the Secretary of State for $37,750 each, in favor of Harry Metzel, Trustee, etc.	$188,750	
Diplomatic Warrant No. 4455 in "Outstanding Liabilities"	37,750	
Total unpaid amount *awarded to Harry Metzel, Trustee, etc.*		$226,500.00
Certificates Nos. 2333 and 2516 of the Secretary of State for $9,375 and $46,875, respectively, in favor of John W. Le Crone, being the total unpaid amount awarded to *John W. Le Crone, Receiver, etc*.....		56,250.00
		$282,750.00

Treasury Department, July 26, 1917.

Six, Seven, Eight, Nine. As to the allegations contained in paragraphs six, seven, eight and nine of the bill of complaint, these defendants say that they refer to and, by reference, incorporate into

this paragraph of their answer, such parts of the original
67 pleadings, proceedings, and docket entries of the Supreme Court of the District of Columbia in the suit of William M. Safford vs. Franklin MacVeagh, et al., in equity No. 30,289, now pending in this court, as bear upon the plaintiff's allegations in paragraphs six, seven, eight, and nine of its bill of complaint.

Ten. As to the allegations contained in paragraph ten of the bill of complaint, these defendants say that the pay warrant, dated October 11, 1912, in favor of Harry V. Metzel, Trustee in Bankruptcy of the Orinoco Corporation, for Thirty-seven thousand, seven hundred and fifty dollars ($37,750.00) was not paid, and that the amount thereof was covered back into the United States Treasury to credit of "Outstanding Liabilities."

Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen. As to the allegations contained in paragraphs eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen of the bill of complaint, these defendants say they refer to and, by reference, incorporate into this paragraph of their answer, such parts of the original pleadings, proceedings, and docket entries of the Supreme Court of the District of Columbia in the suit of William M. Safford vs. Franklin MacVeagh, et al., in equity No. 30,289, now pending in this court, as bear upon the plaintiff's allegations in paragraphs eleven, twelve, thirteen, fourteen, fifteen, sixteen, and seventeen of its bill of complaint.

Eighteen, Nineteen, Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four, Twenty-five, Twenty-six, Twenty-seven, Twenty-eight, Twenty-nine, Thirty, Thirty-one, Thirty-two, Thirty-
68 *three, Thirty-four, Thirty-five, Thirty-six,* and *Thirty-seven.* As to the allegations contained in paragraphs eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, and thirty-seven of the bill of complaint, these defendants say that so far as the same concern matters of fact, these defendants have no reliable information concerning said allegations, and that, therefore, they neither admit nor deny, but so far as the same may be, or become, material, they require strict proof thereof, and so far as the allegations contained in said paragraphs of the bill of complaint state conclusions, they constitute matters of law concerning which these defendants say they are advised that they are not called upon to make answer unto.

Further answering the bill of complaint, these defendants claim the benefit of objection for want of jurisdiction to the same extent as if they had pleaded the same specially or had moved to dismiss the bill.

And having fully answered, these defendants pray that the bill of complaint may be dismissed with costs.

OSCAR T. CROSBY,
Acting Secretary of the Treasury.
JOHN BURKE,
Treasurer of the United States.
F. A. R.
C. A. M.
R. A. C.

JOHN E. LASKEY,
United States Attorney, D. C.

69 DISTRICT OF COLUMBIA, *To wit:*

I. Oscar T. Crosby, Acting Secretary of the Treasury, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of personal knowledge are true, and those made upon information and belief, I believe to be true.

OSCAR T. CROSBY.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 26" day of July, A. D. 1917.
[SEAL.] WILLIAM J. MARTIN,
Notary Public.

DISTRICT OF COLUMBIA, *To wit:*

I, John Burke, Treasurer of the United States, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of personal knowledge are true, and those made upon information and belief, I believe to be true.

JOHN BURKE.

Subscr ed and sworn to before me, a notary public in and for the District of Columbia, this 26th day of July, A. D., 1917.
[SEAL.] ELLA F. VAN ZANDT,
Notary Public.

70 *Answer of John W. Le Crone, Receiver of the Orinoco Company, Limited.*

Filed August 8, 1917.

* * * * * * *

Now comes the defendant, John W. Le Crone, Receiver of the Orinoco Company Limited, and for his answer to the Plaintiff's Bill of Complaint, says:

I. That the pretended service of original process upon him in this suit by publication of the Order heretofore lately made, requir-

ing him to cause his appearance to be entered herein, is invalid and insufficient to give this Court jurisdiction to hear and determine the matters set forth and alleged against him in said Bill; and he prays judgment of the Court here whether he shall further answer the same; and that upon hearing this plea he be dismissed hence.

II. And for a further defense, without waiving the foregoing exception to the jurisdiction, he says:

That he is, and ever since the 10th day of November 1909 has been, the duly appointed, qualified and acting Receiver of the property of said Company, including all of its rights to the Fund mentioned in said Bill, and all of the demands and rights of action against plaintiff hereinafter mentioned,—duly appointed by the District Court within and for the Fifth Judicial District of the State of Minnesota, in a suit brought and then pending in said Court against said Company upon a judgment for money against it, after
71 execution issued and returned unsatisfied, to enforce said judgment against the said property of said Company; said Court then and there having full jurisdiction in law and equity to entertain said suit and to appoint, as it did, a receiver of its said property, — with full power and authority to recover, have, possess and hold the same, and apply the same and the proceeds thereof, under the Orders of said Court, to the satisfaction of such judgment.

Notwithstanding the premises, said plaintiff has commenced and is prosecuting this suit against this defendant receiver without the leave or consent of said Court.

Therefore this Court is, as defendant is advised, without jurisdiction or right to hear and determine the matters alleged in said Bill against him; and he prays the judgment of the Court here whether he shall further answer the same; and that this plea being heard, he be dismissed hence.

III. And for a further defense this defendant, without waiving the foregoing exceptions, says:

That claims to share in the distribution of said Fund were duly presented to the Secretary of State of the U. S. A. by and on behalf of the plaintiff; the Trustee of The Orinoco Corporation; the Receiver of the Orinoco Company Limited and others, who respectively asserted rights to, interests in or liens on said Fund.

These several claims were disputed and litigated by and among said claimants before said Secretary, and he, after hearing and considering the allegations and proofs adduced by them respec-
72 tively, and after hearing counsel and being fully advised in the premises, afterwards, to wit; on the 20th day of June 1911, proceeding in accordance with the statute of the United States in such case made and provided; to wit; the Act of Congress of Feb'y 27th 1896, rejected the claims of plaintiff, and determined and adjudged that this defendant as such Receiver was entitled to $75,000, to be paid out of said Fund, as is set forth in the Order made by him on that date.

Which Order, determination and judgment yet remains and is in full force and effect.

The claims set forth in plaintiffs said Bill embrace the claims so presented by it to said Secretary and claims which it might then have presented and had adjudged and determined by him pursuant to the requirements of that Act.

IV. And for a further defense, this defendant, not waiving any or either of the foregoing exceptions or pleas, says;

That he was and is an utter stranger to the several transactions mentioned in paragraphs of the plaintiff's Bill, numbered;

1; 2; 3; 13; 18; 19, 20; 21; 22; 23; 24; 25; 26; 27; 28; 30; 31; 32; 35; 37;

That he is without knowledge of the facts therein stated, upon which plaintiff relies,—except as hereinafter expressly admitted, explained or denied.

73 V. This defendant *admits* as follows; to wit:

1. His residence, as alleged in paragraph 2 of said Bill.
2. The Protocol of Sep. 9, 1909, as alleged in pargf. 3.
3. The facts averred in the following numbered paragraphs; 4; 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 16; and 17 thereof.
4. The presentation of plaintiff's Petition, and the refusal of the Secretary of State to allow its claims, as set forth in paragraph 29 of said Bill.

VI. This defendant *denies* as follows:

1. The allegations of fraud in paragraph 33 of the Bill, and all allegations of fraud, conspiracy or collusion therein whereby he is implicated.
2. The allegations of paragraph 34 of said Bill, that the Proceedings therein mentioned in the District Court for the Fifth Judicial District for the County of Rice, were fraudulent or collusive; And he avers that said Orinoco Company Limited then had its domicile and principal place of business within the territorial jurisdiction of that Court, where all of its Directors, officers and principal stockholders resided.
3. He disputes the matters asserted in paragraphs 28; 31; 32; and 36 of said Bill.

VII. And for a further defense this defendant, not waiving any or either of the foregoing pleas and exceptions, says:

74 That if plaintiff and the Orinoco Company Limited entered into the agreement alleged in plaintiffs Bill, or any similar agreement, plaintiff, as this defendant is informed and believes, has, without valid excuse, neglected and refused to pay the royalties which it thereby undertook and became bound to pay; and is indebted on that account to this defendant as the Receiver of that Company, in the sum of seventy-five thousand dollars and upwards, principal and interest.

This defendant avers that, as he is informed and believes, the said Orinoco Company Limited heretofore,—to wit,—on the 8th day of March 1901,—gave plaintiff due notice (in writing) that it terminated such agreement and all of plaintiffs rights thereunder, on ac-

count of its failure to pay such royalties, and thereby canceled the same.

VIII. And for a further defense this defendant, not waiving any or either of the foregoing pleas or exceptions, says;—

That no action has accrued to plaintiff, if at all, within the period prescribed by law for bringing suits of this character.

That, as this defendant is informed and believes, plaintiff never asserted, claimed or pretended, to the said Secretary of State nor to said Orinoco Company Limited or its officer, agent or representative; nor has it to this defendant, (previous to the filing of its said Bill),

75 in any of the proceedings mentioned therein, which resulted in the said Protocol of Sept. 9th, 1909, and in the order and determination of said Secretary of June 20th 1911, that plaintiff was ever the owner of the steamer "Perla" nor that it had any rights in or to the iron deposits mentioned in said Bill; (After Mar. 8, 1901) and by its conduct in the premises it induced all the said interested parties to act in all of said matters and transactions under the impression that plaintiff claimed no rights in, to, upon or against the Fund created by said Protocol by reason of such now asserted ownership or rights, and is therefore now estopped from asserting the same alleged interest in or rights to or against said Fund in the hands of this defendant to his disherison and detriment, which will result if plaintiff is allowed to maintain this suit against him.

The plaintiff, as this defendant is informed and believes, well knowing that said Company and its agents, representatives and Receivers were expending large sums of money in said proceedings, under the impression above mentioned, stood by and was silent, when it should have spoken out and asserted its now alleged rights and interests. "Qui tacit consentire videtur."

IX. Wherefore this defendant prays that, as against him, this suit be dismissed.

JOHN W. LE CRONE,
Defendant.

McLANAHAN & BURTON,
Defendant's Attorneys, Washington, D. C.

76 STATE OF MINNESOTA,
County of Rice, ss:

John W. Le Crone of said County, being first duly sworn deposes and says:

That he is the above named defendant, who subscribed the foregoing Answer, and that he verily believes the facts stated therein to be true.

JOHN W. LECRONE.

Subscribed and sworn to before me this 28th day of June, 1917.

[SEAL.] ROBERT MU,
Notary Public, Rice Co., Minn.

My commission expires July 12, 1923.

Motion to Strike Out Parts of Answer of Defendant John W. Le Crone, Receiver.

Filed September 14, 1917.

* * * * * * *

Now comes the plaintiff, by its attorneys, and moves the court to strike out Paragraphs I and II of the answer of defendant John W. Le Crone, for the reasons and on the ground, viz.:

1. That under the practice and the rules of this court, objection to the service of process set up in Paragraph I, should have been raised by separate motion before answer, and not in the answer.
2. That having raised said objection by motion and then without waiting for the action of the court on the motion, the de-
77 fendant having fully answered as to the merits of the bill, the said motion as well as the objection to service of process set up in the answer, are both waived or overruled thereby.
3. That the question of the jurisdiction of the court over the defendant Le Crone, as set up in Paragraph II of his answer, is a question of law arising on the face of the bill, and under the rule, should have been presented by a motion to dismiss and not in the answer.
4. That the defendant Orinoco Company, Limited, which the defendant John W. Le Crone claims to represent as received, has separately answered as to the merits of the bill and thereby submitted itself to the jurisdiction of the court.
5. That the defendant Le Crone has by his answer to the merits submitted himself to the jurisdiction of the court for all of the purposes of the bill filed herein.

EDWARD S. DUVALL,
WM. R. HARR,
Attorneys for Plaintiff.

To Messrs. McLanahan & Burton,
Attorneys for Defendant Le Crone:

Please take notice that the aforegoing is for hearing on the next regular motion day occurring more than two days after service hereof.

EDWARD S. DUVALL,
WM. R. HARR,
Attorneys for Plaintiff.

78 Receipt of a copy of the foregoing motion and notice on this 4th day of September, 1917, is hereby acknowledged.

McLANAHAN & BURTON,
Attys. for Defendant John W. Le Crone, Receiver.

Memorandum.

September 14, 1917.—Proofs of Publication in The Washington Post and The Washington Law Reporter, filed.

Affidavit as to Mailing of Copies of Advertisement.

Filed September 14, 1917.

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

Edward S. Duvall, being first duly sworn, on oath says; that he is one of the attorneys of record for plaintiff in the above-entitled cause; that as such attorney he personally mailed, postpaid, a true copy of the advertisement of the order of publication passed by the court in said cause on June 15th, 1917, as the same appeared in the Washington Post of its issue of June 16th, 1917, directed to each of the parties therein ordered to appear, at his or its last known place of residence, on the dates set down opposite their respective names, as follows; To William M. Safford on June 20th, 1917, addressed to him at #20 Broad Street, New York City; to The Orinoco Company, Limited, on June 19th, 1917, addressed to it at Opera House
79 Block, Faribault, Minnesota; to the Manoa Company, Limited, on June 20th, 1917, addressed to it in the care of William M. Safford, its Vice- and acting President, at #20 Broad Street, New York, N. Y.; to The Orinoco Company, on June 27th, 1917, addressed to it in the care of Messrs. Clapp & McCartney, St. Paul, Minnesota; to George E. Fitzgerald, on June 20th, 1917, addressed to him at Adams, Massachusetts; to John W. Le Crone, Receiver etc., on June 19th, 1917, addressed to him at Faribault, Minnesota; and to James A. Radcliffe on June 27th, 1917, addressed to him at #169 Columbia Heights, Brooklyn, N. Y., and a second copy of the same was mailed to him in the manner aforesaid, on the same date, addressed to him at his office #144 Pearl Street, New York City; that he does not know and he has been unable to ascertain the last place of residence of Harold H. Verge, one of the parties therein ordered to appear, after diligent effort to ascertain the same, inquiries being made for his address at every source considered as likely to afford any information concerning same, including inquiries of his attorneys of record in Equity cause No. 30289, depending in this court, and of attorneys for some of the other parties to said cause.

EDWARD S. DUVALL.

Subscribed and sworn to before me on this 5th day of September, A. D. 1917.

J. R. YOUNG,
Clerk,
By FRED. C. O'CONNELL,
Asst. Clerk.

80 *Memorandum.*

September 14, 1917.—Decree pro confesso against certain nam
defendants, filed.

Decree.

Filed November 19, 1917.

* * * * * * *

Upon consideration of the motion of the defendant John
Le Crone, as receiver of the Orinoco Company, Ltd., to qua
service of process on him and vacate the order of publication; a
of the motions of the plaintiff to strike out paragraphs I and II
the answer of said defendant and paragraph I of the answer
the defendant, the Orinoco Company, Ltd., it is by the Court, t
19th day of November, A. D. 1917, adjudged, ordered and decre
as follows, viz:

1. That the said motion of the defendant John W. Le Crone
ceiver, be and the same is hereby overruled.

2. That the said motions of the plaintiff be, and the same
hereby granted and that paragraphs I and II of the answer of s
defendant, John W. Le Crone, receiver, and paragraph I of
answer of defendant Orinoco Company, Ltd., be, and the same here
are stricken out.

By the Court.

ASHLEY M. GOULD,
Justice.

81 *Decree Making pro Confesso Absolute.*

Filed April 10, 1918.

* * * * * * *

This cause coming on to be heard on the application of the pla
tiff by its counsel to have the decree pro confesso, entered herein
the 14th day of September, A. D. 1917, made absolute, and it appe
ing to the court that none of the defendants against whom said dec
was passed have taken any action herein to have the same vacat
upon consideration thereof, it is by the court on this 10th day
April, 1918, adjudged, ordered and decreed as follows, viz:

That the claim of the plaintiff herein to the sum of $56,250.
now held in the custody of the Secretary of the Treasury and
Treasurer of the United States, under certain orders of this co
passed in Equity cause 30,289, entitled William M. Safford, et
vs. William G. McAdoo, Secretary of the Treasury, et al., being th
portion of the fund which was paid into the United States
Venezuela on account of a certain award, and known as the Orin
Indemnity Award, and which said portion of the fund is claimed

the defendants Orinoco, Limited, and John W. Le Crone, as receiver of said company, is hereby found and declared to be paramount to the several claims and demands of the defendants William M. Safford, the Manoa Company, Limited, the Orinoco Company, George E. Fitzgerald individually and as administrator of the estate of Cyrenius C. Fitzgerald, deceased, Harold H. Verge, James A. Radcliffe, and Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, co-partners doing business under the
82 firm name of Ralston, Siddons and Richardson, and that on final hearing of this cause, the claim of the plaintiff shall be considered and treated as one having priority over the claims and demands of the said defendants.

ASHLEY M. GOULD,
Justice.

Stipulation.

Filed March 24, 1919.

* * * * * * *

It is hereby stipulated that the hearing of the above entitled cause, if reached before the 30th day of April 1919, shall be postponed until that date, or such subsequent date as may be designated by the court or may be dropped from the assignment to be restored on two days' notice for a time not earlier than said date.

Dated March 10, 1919.

EDWARD S. DUVALL,
Attorney for Plaintiff.
ARTHUR R. COLBURN,
GEO. N. BAXTER,
Attorneys for Defendants.

March 11, 1919.
I have no objection.
JOHN E. LASKEY,
U. S. Atty., D. C.

83 *Stipulation.*

Filed September 23, 1919.

* * * * * * *

It is hereby stipulated that this case may be continued until the October 1919 term of this Court.

WILLIAM R. HARR,
EDWARD S. DUVALL, JR.,
Attorneys for Plaintiff.
ARTHUR R. COLBURN &
GEO. N. BAXTER,
Attorneys for Defendants.

Order for Substitution of Party as Defendant.

Filed October 3, 1921.

* * * * * * *

Upon consideration of the motion of plaintiff filed herein and for good cause shown, it is by the court on this 3d day of October, 1921, adjudged and ordered as follows, viz;

That Frank White, as Treasurer of the United States, be and he is hereby substituted as a party defendant in the above-entitled cause, in the place and stead of defendant John Burke, resigned as such official.

WENDELL P. STAFFORD,
Justice.

84 *Amendment to Bill.*

Filed October 3, 1921.

* * * * * * *

Comes now the plaintiff by its attorneys, with leave of court for this purpose first had and obtained, and amends its bill of complaint in the above-entitled cause by adding thereto and making the following named person, in his official capacity, a new party defendant to this cause upon the allegations and other parts of plaintiff's bill of complaint, which are hereby referred to and made parts hereof as fully as if incorporated physically herein, namely; Andrew W. Mellon, Secretary of the Treasury, at present residing in the District of Columbia, who is sued in his official capacity as such.

EDWARD S. DUVALL,
WM. R. HARR,
Attorneys for Plaintiff.

Fiat of Justice Stafford.

Leave to file granted.

WENDELL P. STAFFORD,
Justice.

85 *Marshal's Return to Spa. to Ans. Issued October* 4, 1921.

Served copy of within on A. W. Mellon, Secty. of the Tre-s., Personally Oct. 4, 1921.

MAURICE SPLAIN,
U. S. Marshal.
K.

Motion to Dismiss Bill.

Filed April 4, 1922.

* * * * * * *

Now comes the Orinoco Company Limited; John W. Le Crone, Receiver, and Geo. N. Baxter, who is interested in the above entitled suit as the judgment creditor of said the Orinoco Company Limited, and respectively move the court here to dismiss this suit as against said John W. Le Grone, receiver and said Company; because;

1st. The plaintiff has not prosecuted the same with diligence.

2nd. This court is without jurisdiction to hear and determine the same; inasmuch as it is a suit against the United States of America seeking a decree in favor of plaintiff for the recovery of monies in its Treasury held by it in trust to be disposed of in accordance with the Act of Congress approved Feb'y 27th 1896.

3rd. This suit was brought against said Receiver, appointed by another court, without the consent of that court.

4th. The plaintiffs bill is bad in substance in that it does not appear therefrom that plaintiff is entitled to the relief prayed for therein or to any relief in the premises, even if this court had
86 jurisdiction of the cause.

GEO. N. BAXTER &
MOSES E. CLAPP,
His Attorney.

To Messrs. Wm. R. Harr and Edward S. Duvall, Esquires,
Attorneys for Plaintiff:

Take notice that the aforegoing will be for a hearing on the 7th day of April, 1922.

GEO. N. BAXTER &
MOSES E. CLAPP,
His Attorney.

Decree Overruling Motion to Dismiss Bill.

Filed April 21, 1922.

* * * * * * *

This cause came on to be heard at this term on the motion filed herein on the 4th day of April, 1922, on behalf of the defendants Orinoco Company, Limited, and John W. Le Crone, receiver, to dismiss the bill of complaint, and was argued by counsel for the respective parties, and thereupon, upon consideration thereof, it is by the court, on this 21 day of April, A. D. 1922, adjudged, ordered and decreed, that said motion to dismiss the bill be, and the same is, hereby overruled.

By the Court,

JENNINGS BAILEY,
Justice.

87 *Decree.*

Filed October 23, 1922.

* * * * * * *

This cause came on for hearing at this term on the motion of plaintiff for a further decree absolute against the hereinafter named defendants, and thereupon, upon consideration thereof, it is by the court on this 23rd day of October, 1922, adjudged, ordered and decreed as follows, viz:

That the decree pro confesso heretofore entered in this cause be, and the same is, hereby made absolute and final in all respects against the defendants William M. Safford, The Manoa Company, Limited, The Orinoco Company, George E. Fitzgerald, Harold H. Verge and James A. Radcliffe.

WALTER I. McCOY,
Chief Justice.

Suggestion by Defendants Ralston, Siddons, & Richardson as to Injunction.

Filed October 25, 1922.

* * * * * * *

Come now the defendants herein Jackson H. Ralston, Frederick L. Siddons, and William E. Richardson, formerly co-partners, practicing law under the firm name of Ralston, Siddons and Richardson, and respectfully suggest to this Court that, on or about the 15th day of November, 1914, a restraining order was entered in the District Court of the United States for the Southern District of Ohio, Western Division, in that certain cause there pending entitled Charles
88 W. Schmidt, Louis Hauck, Maurice J. Freiberg, Farny R. Murlitzer and W. S. Little, plaintiffs, vs. The Orinoco Corporation, defendant, and numbered 4665 on the bankruptcy docket of that court, wherein and whereby, among others, these defendants, individually and as co-partners as aforesaid, their agents, servants, attorneys and solicitors, were, or were attempted to be, restrained and enjoined from proceeding in any way in the above-entitled suit of The Orinoco Iron Company, plaintiff, vs. William M. Safford, et al., defendants, and from bringing or instituting in this Court or any other Court, except the aforesaid District Court of the United States for the Southern District of Ohio, Western Division, any suit or suits against Harry V. Metzel, individually, or as trustee of The Orinoco Corporation in bankruptcy, or against the estate of The Orinoco Iron Corporation, or any suit or suits where any claim of any interest in or lien on the indemnity fund known as The Orinoco Indemnity Fund is set up or claimed; all of which will more fully appear upon reference to a copy of said restraining order which is hereto attached and prayed to be read as part hereof.

And these defendants further suggest to the Court that, by reason of the foregoing restraining order, they have been advised that they should not file an answer to the bill of complaint herein, for which reason, they are, apparently, in default in respect thereof, and that they probably cannot safely press their claim, at this time, against the fund under the jurisdiction of this Court in the above-entitled cause.

89 And these defendants have been advised that they should make the foregoing suggestion to this Court, in order that their rights may be suitably preserved by the Court, pending such time as the foregoing restraining order may be dissolved or modified, and these defendants left free to take such steps as they may be advised are necessary or proper for their protection in the subject matter of the litigation herein.

PEELLE & OGILBY,
Attorneys for said Defendants.

In the District Court of the United States for the Southern District of Ohio, Western Division.

In Bankruptcy.

#4665.

CHARLES W. SCHMIDT, LOUIS HAUCK, MAURICE J. FREIBERG, FARNY R. WURLITZER, and W. S. LITTLE, Plaintiffs,

v.

THE ORINOCO CORPORATION, Defendant.

Decree restraining The Orinoco Iron Company, a corporation organized under the laws of West Virginia, William R. Harr, and Edward S. Duvall, Jr., attorneys for said The Orinoco Iron Company, and Jackson H. Ralston, Frederick L. Siddons, and William E. Richardson, individually and as copartners under the firm name of Ralston, Siddons & Richardson, jointly and severally, their agents, servants, attorneys, and solicitors, and the agents, servants, attorneys, and solicitors of any one or more of them, from proceeding in any way in the suit of The Orinoco Iron Company, plaintiff, against William M. Safford, et al., in equity, number 33031, Supreme Court of the District of Columbia, and for an order requiring The Orinoco Iron Company and William R. Harr and Edward S. Duvall, Jr., attorneys for said The
90 Orinoco Iron Company, to cause said suit instituted by them to be dismissed and the restraining order issued therein to be dissolved.

This cause came on this day to be heard upon the petition of Harry V. Metzel as trustee of The Orinoco Corporation, in bankruptcy, for an order restraining The Orinoco Iron Company, a corporation under the laws of West Virginia, William R. Harr, of the City of Washington, District of Columbia, attorneys for said

The Orinoco Iron Company, and Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, individually and as co-partners under the firm name of Ralston, Siddons and Richardson, doing business in the city of Washington, District of Columbia, jointly and severally, their agents, servants, attorneys and solicitors, and the agents, servants, attorneys and solicitors of any one or more of them, from proceeding in any way in the suit of The Orinoco Iron Company, plaintiff, against William M. Safford, et al., defendants, in equity number 33031, in the Supreme Court of the District of Columbia, and for an order requiring The Orinoco Iron Company and William R. Harr and Edward S. Duvall, Jr., to cause said suit instituted by them on November 13, 1914, and known as equity cause number 33031, to be dismissed and the restraining order issued therein to be dissolved, and it appearing that said The Orinoco Iron Company did on the 19th day of December, 1911, voluntarily appear, prove and file with William H. Whittaker, Esquire, Referee in Bankruptcy, appointed by this court for Hamilton
County, Ohio, its claim against The Orinoco Corporation, in
91 bankruptcy, and thereby submitted itself to the jurisdiction of this court in this cause.

And it appearing that said Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, partners as Ralston, Siddons & Richardson, did on the 9th day of January, 1911, appear, prove and file with said William H. Whittaker, Esquire, Referee in Bankruptcy, their claim against The Orinoco Corporation, and thereby submitted themselves to the jurisdiction of this court in this cause, and that a dividend was thereafter paid by the Trustee in Bankruptcy of The Orinoco Corporation to said Ralston, Siddons & Richardson.

And it appearing upon the representation of the Trustee in Bankruptcy heretofore appointed in this cause that on November 13, 1914, said The Orinoco Iron Company after it had noticed that an application had been filed in this court to restrain it and Jackson H. Ralston, et al., from prosecuting their respective intervening petitions, in equity cause 30289, Supreme Court of the District of Columbia, William M. Safford against Franklin MacVeagh, Secretary of the Treasury, et al., defendants, secured an order of the Supreme Court of the District of Columbia, withdrawing its intervening petition and the amendment to said intervening petition filed by leave of court on November 11, 1914, and immediately upon said date, to-wit, November 13, 1914, filed a petition in said court, in equity number 33031, against William M. Safford, et al., making with others, Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, co-partners under the firm name of Ralston,
Siddons & Richardson, parties defendant, in which petition
92 it appears to the court, that the same claim is set up as was set up in the claim filed in this court and is one and the same claim.

It is therefore ordered, adjudged and decreed, that the said The Orinoco Iron Company, William R. Harr, Edward S. Duvall, Jr., attorneys for said The Orinoco Iron Company, and Jackson H. Ral-

ston, Frederick L. Siddons and William E. Richardson, individually and as co-partners under the firm name of Ralston, Siddons and Richardson, jointly and severally, their agents, servants, attorneys and solicitors, and the agents, servants, attorneys and solicitors of any one or more of them, be and they are hereby restrained and enjoined from proceeding in any way in said suit of The Orinoco Iron Company, plaintiff, against William M. Safford, et al., defendants, in equity number 33031, in the Supreme Court of the District of Columbia, and from bringing or instituting in said court or any other court, except this court, any suit or suits against Harry V. Metzel, individually or as Trustee of The Orinoco Corporation in Bankruptcy, or against the estate of said The Orinoco Corporation, and any suit or suits wherein any claim or any interest in or lien on said indemnity fund known as The Orinoco Indemnity Fund is set up or claimed.

And said The Orinoco Iron Company, and William R. Harr and Edward S. Duvall, Jr., attorneys for said The Orinoco Iron Company and each of them, are hereby ordered to cause said suit instituted by them on November 13, 1914, in the Supreme Court of the District of Columbia, and known as equity number 33031, to be forthwith dismissed and the restraining order issued therein dissolved.

93 *Memorandum Opinion.*

Filed January 30, 1923.

* * * * * * *

The evidence requires a finding that the plaintiff was prevented from going on with the performance of its contract by the action of the government of Venezuela, by revolutions and other occurrences over which it had no control. The making of the award was based upon these facts and defendants cannot now question them.

The evidence requires also a finding that the plaintiff was always ready, able and willing to perform the contract and was not in default.

A further fact is that the plaintiff spent a very much larger amount than the remainder of the award now in the Treasury.

Under the circumstances the conclusion of law is that the plaintiff is entitled to a decree for the above mentioned balance.

Plaintiff is willing that Ralston, Siddons and Richardson should be paid a fair amount for their services as attorneys which procured the fund in question. They however are under injunction issued out of the District Court in bankruptcy proceedings in Ohio. Whether the Court should make a decree under those circumstances in favor of the attorneys or whether the question of fees should be left for their adjustment with the plaintiff the Court is in doubt and will be glad to be further advised in the premises.

Settle decree on notice.

WALTER I. McCOY,
Chief Justice.

94 *Joint and Separate Answer of Andrew W. Mellon and Frank White to the Bill of Complaint and Rule to Show Cause.*

Filed February 2, 1923.

* * * * * * *

Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, expressly and specially reserving unto themselves, and each of them, as defendants herein, all manner of exceptions that may be had to the manifold uncertainties, imperfections, and defects of the Bill of Complaint filed herein, and averring, and respectfully submitting that the Court is without jurisdiction over said defendants, or either of them, to grant the relief therein prayed, or to subject said defendants, or either of them, to its control, order or direction in the performance of their official duties in this specific matter, or any other like matter, as Secretary of the Treasury and Treasurer of the United States, respectively; and further averring, and respectfully submitting that the complainant in this case is without status to pray, and the Court without jurisdiction to grant the relief prayed for in said Bill against said defendants, or either of them: Notwithstanding, for answer to said rule to show cause, issued on the Bill of Complaint, January 18, 1923, and answering for and on behalf, jointly and individually, of themselves as said defendants, they say:

That the defendant, Andrew W. Mellon, is a citizen of the United States, temporarily residing in the District of Columbia, and is the Secretary of the Treasury of the United States; and that Frank White is a citizen of the United States, temporarily residing
95 in the District of Columbia, and is the Treasurer of the United States.

The defendants say that by the Act approved February 27, 1896, 29 Stats., 32, Congress provided that:

"Hereafter all moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the ascertained beneficiaries thereof of the certificates herein provided for."

On September 9, 1909, a protocol was entered into between the United States of America and the United States of Venezuela respecting a certain claim known as the claim of the Orinoco Corpora-

tion, and its predecessors in interest, the Manoa Company Limited, the Orinoco Company and the Orinoco Company Limited, whereby the United States of Venezuela promised and agreed to pay to the said United States of America the sum of $385,000 at the office of the Secretary of State, Washington, D. C., in eight equal instalments of $48,125.

The total award paid into the Treasury and credited to the Trust Fund "Claim of Orinoco Corporation" was as follows:

Date of warrant covering payment into U. S. Treasury.	Amount of annual payment by Venezuela.
September 30, 1909	$48,125
September 30, 1910	48,125
September 30, 1911	48,125
September 30, 1912	48,125
September 30, 1913	48,125
October 31, 1914 (Deposited October 24)	48,125
September 30, 1915	48,125
September 30, 1916	48,125
Total	$385,000

96 From the said trust fund of $385,000 so received from Venezuela there has been paid by the United States the sum of $328,750, leaving to the credit of said fund a balance of $56,250 subject to payment pursuant to two certificates of the Secretary of State which read as follows:

Certificate No. 2333.

Department of State.

August 28, 1912.

To the Secretary of the Treasury.

SIR:

Please cause a warrant to be issued in favor of John W. Le Crone, Receiver of the Orinoco Company, Limited, Faribault, Minnesota, for nine thousand three hundred seventy-five dollars, which amount I hereby certify to be due, and payable out of the following-named trust fund: Claim of the Orinoco Corporation against Venezuela.

$9,375.00.

HUNTINGTON WILSON,
Acting Secretary of State.

Certificate No. 2516.

Department of State.

May 5, 1917.

To the Secretary of the Treasury.

SIR:

Please cause a warrant to be issued in favor of John W. Le Crone, Receiver of the Orinoco Company, Limited, Faribault, Min-
97 nesota, for forty-six thousand, eight hundred seventy-five dollars, which amount I hereby certify to be due, and payable out of the following-named trust fund: "Claim of the Orinoco Corporation against Venezuela."

$46,875.00.

ROBERT LANSING,
Secretary of State.

These defendants further say that the Act of February 27, 1896, makes the appropriation for the payment of this fund and appropriates it exclusively "for the payment of the ascertained beneficiaries thereof of the certificates herein provided for." That these defendants have, therefore, no right to disburse said funds except to the beneficiaries named in the certificates of the Secretary of State. That these defendants are by law prohibited from disbursing any funds in the Treasury of the United States except pursuant to appropriations made by law.

Wherefore, these defendants aver and submit that this Honorable Court is without jurisdiction or authority to grant the relief prayed in the Bill of Complaint, for the reason that the Act of February 27, 1896, gives to the Secretary of State exclusive and uncontrollable right, power and authority to determine the persons to whom the moneys described in said Act shall be paid, without the right or power in any court to review, reverse or modify his action. That the fund received by the Secretary of State from the United States of Venezuela and covered into the Treasury of the United States, pursuant to the express provisions of said Act of 1896, is not such a fund that the complainant or any other person has any legal right
98 thereto and said fund is wholly and exclusively the property of the United States. That the United States received said money in its capacity as sovereign, and not as the agent or trustee for any person, and that no person has a legal claim thereto or interest therein. That in determining the persons to whom the said fund shall be paid under the Act of February 27, 1896, the Secretary of State is not governed by mere rules of law, and that it would be impossible for a court of equity to perform the duties of the Secretary of State in administering said fund, for the reason that such court is limited and restricted by such rules of law as would make it impossible, in many instances, to administer said funds.

These defendants further say that the Act of February 27, 1896, imposes upon them a mandatory duty to pay from the funds referred to in these proceedings the persons named in the aforementioned certificates of the Secretary of State That by said statute, the Secretary of State is entitled to dispose of the said fund and this Court has no power or jurisdiction to direct these defendants, as the Secretary of the Treasury and Treasurer of the United States, to pay said funds or any part thereof to others than the person named in the said certificates of the Secretary of State, dated respectively, August 20, 1912, and May 5, 1917.

The defendants further say that the appropriation made by the Act of February 27, 1893, is by express terms limited to payments to persons named by the certificates of the Secretary of State, and the complainant is not named in any certificate of the Secretary of State now before the defendant, the Secretary of the Treasury, as a
99 person entitled to receive any part of the trust fund. Wherefore, these defendants respectfully submit that this Honorable Court is without jurisdiction over them to direct the payment out of said fund to a receiver appointed in this cause; and without power to enjoin these defendants from making payment, as they are under the said statute obligated to do, to those persons named in the certificates of the Secretary of State.

Further answering the Bill of Complaint, these defendants say that the relief therein sought against them involves the exercise of the judgment and discretion of the Secretary of State in his official capacity, the exercise of which this Honorable Court has no jurisdiction to control; and further, the complainant seeks to enjoin these defendants from the performance of a plain ministerial duty imposed by statute, which said defendants are about to perform in compliance with the mandate of the said Act of February 27, 1896.

Wherefore, having fully answered the said rule to show cause, issued herein, these said defendants pray that the prayer of the said Bill for a receiver and injunction pendente lite be denied, and the rule be discharged and the defendants be hence dismissed with their reasonable costs.

A. W. MELLON,
Secretary of the Treasury.
S. O. G.
FRANK WHITE,
Treasurer of the United States.

R. R. McMAHON,
Solicitor of the Treasury.
PEYTON GORDON,
United States Attorney, D. C.

100 DISTRICT OF COLUMBIA, *ss:*

I, Andrew W. Mellon, being first duly sworn, upon oath depose and say: That I am Secretary of the Treasury of the United States of America, that I have read the foregoing Answer by me subscribed, and know the contents thereof; and that the matters and facts

therein stated of my own knowledge are true, and those stated upon information and belief I believe to be true.

A. W. MELLON,
Secretary of the Treasury.
S. O. G.

Subscribed and sworn to before me, this 31st day of January, A. D., 1923.

[SEAL.]

H. W. STUTLER,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss:*

I, Frank White, being first duly sworn, upon oath depose and say: That I am Treasurer of the United States of America, that I have read the foregoing Answer by me subscribed, and know the contents thereof; and that the matters and facts therein stated of my own knowledge are true, and those stated upon information and belief I believe to be true.

FRANK WHITE,
Treasurer of the United States.

Subscribed and sworn to before me, this 31st day of January, A. D., 1923.

101

[SEAL.]

ELLA F. VAN ZANDT,
Notary Public, D. C.

Final Decree.

Filed February 3, 1923.

* * * * * * *

This cause came on to be heard at this term upon the pleadings and upon evidence adduced on behalf of plaintiff and on behalf of the defendants the Orinoco Company, Limited, and John W. Le Crone as Receiver of said Company, and was argued by counsel for all of the aforesaid parties, and thereupon, upon consideration thereof it is, by the court, on this 3rd day of February, A. D., 1923, adjudged, ordered, and decreed as follows, viz.:

1. That the motion on behalf of the defendant John W. Le Crone, Receiver of said Orinoco Company, Limited, to dismiss the bill of complaint for want of jurisdiction over said defendant, made on final hearing and after evidence on the merits of the bill had been adduced by said defendant, be and the same hereby is overruled.

2. The court finding that the claim by plaintiff of equitable title to the remainder of the moneys received by the United States of America from the United States of Venezuela by virtue of the Protocol of September 9, 1909, arranging for the settlement of the claims of the Orinoco Corporation and its predecessors in interest, the Manoa Company, Limited, the Orinoco Company, and the

Orinoco Company, Limited, against the Republic of Venezuela, now remaining in the Treasury of the United States, amounting to Fifty-six Thousand Two Hundred and Fifty Dollars ($56,250.00) is established by the evidence, and that said defendants, the Orinoco Company, Limited, and its said Receiver, have no valid right, title or interest therein or thereto, except as trustees for the plaintiff, it is therefore hereby ordered, adjudged and decreed that the plaintiff's right and title to said moneys are complete and absolute and that plaintiff is entitled to receive payment thereof subject only to the attorney's fee hereinafter adjudged to be a lien thereon.

3. It is further adjudged, ordered and decreed that the aforesaid title of plaintiff is superior and paramount to that of any other party to this suit, and subject only to the aforesaid attorney's lien.

4. And the court, upon its own motion, and with the consent of plaintiff, finds that the remainder of the aforesaid moneys now in the Treasury of the United States is subject to an attorney's lien in favor of the defendants Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, formerly copartners practicing law under the firm name of Ralston, Siddons and Richardson, for the sum of Three Thousand Six Hundred and Fifty-two and 31/100 Dollars ($3,652.31), for professional services heretofore rendered by them in procuring said award, and that said defendants are entitled to payment of said amount out of said remainder of said award.

5. That the defendants, the Orinoco Company, Limited, and its Receiver, John W. Le Crone, their successors, transferees and assigns, and their agents, attorneys and servants, and each of them, be and they hereby are perpetually enjoined and restrained from asserting any claim of right, title or interest in or to the aforesaid moneys, and from making any demand or claim therefor on or against the United States, or any officer thereof.

6. That the defendants, the Secretary of the Treasury and the Treasurer of the United States, their successors, attorneys, agents and employees, be and they hereby are perpetually enjoined and restrained from delivering any warrant or order for the payment of the balance of the aforesaid moneys now remaining in the Treasury of the United States, and from making payment of said moneys, by warrant or otherwise, to any person except to the receiver or receivers appointed by the court in this cause.

7. That James M. Proctor be, and he hereby is, appointed to serve as receiver in this cause to receive the aforesaid moneys from the Secretary of the Treasury and the Treasurer of the United States, and forthwith to disburse and pay over the same to the parties herein adjudged entitled thereto as aforesaid; the said receiver to give bond in the penal sum of Sixty-five thousand Dollars, conditioned upon the faithful performance of his duties as such receiver, the compensation of such receiver to be fixed by this court.

8. And it is further ordered and decreed that the defendants, the Secretary of the Treasury and the Treasurer of the United States, be and they hereby are directed and enjoined to pay forthwith into

the hands of the receiver hereby appointed in this cause the afo
said moneys, and said receiver is hereby authorized and directed
execute and deliver a due acquittance and release to sa
104 officials of the Treasury Department upon receipt of payme
of said moneys.

WALTER I. McCOY,
Chief Justice.

From the foregoing decree the defendants, Orinoco Compan
Limited, and John W. Le Crone, its Receiver, the Secretary of t
Treasury and the Treasurer of the United States note an appeal,
open court, and thereupon, as to the Orinoco Company, Limite
and its receiver, the court hereby fixes the amount of the bond f
costs on appeal in the sum of $100.00, and the amount of a supe
sedeas bond in the sum of Ten thousand Dollars.

WALTER I. McCOY,
Chief Justice.

Order Discharging Rule.

Filed February 3, 1923.

* * * * * * *

This cause came on to be heard on the rule to show cause why
injunction *pendente lite* should not issue, returnable February 2
and continued to this day, and thereupon, on motion of counsel f
plaintiff and in view of the final decree entered in this cause on th
date, it is by the court on this 3d day of February, 1923, adjudg
and ordered that said rule be and the same is hereby discharged.

WALTER I. McCOY,
Chief Justice.

105 *Memoranda.*

February 8, 1923.—Bond of Jas. M. Proctor, Receiver, for $6
000 approved and filed.

February 23, 1923.—U. S. Bond for $100 deposited by G. N. Ba
ter in lieu of cost bond.

*Assignment of Errors by Appellants The Orinoco Company, Limite
and John W. Le Crone.*

Filed February 23, 1923.

* * * * * * *

Now come the Appellants, the Orinoco Company Limited a
John W. Le Crone, Receiver, and severally say that the said cou
erred in the following respects and particulars, to wit;

1. In finding that "plaintiff was prevented from going on with t
performance of its contract by the action of the government

Venezuela, by revolutions and other occurrences over which it had no control."

2. In finding that "plaintiff was always ready, willing and able to perform the contract and was not in default."

3. In finding that plaintiff spent a much larger amount than the remainder of the award now in the Treasury.

4. In finding that "plaintiff is entitled to a decree for the above mentioned balance.

5. The court erred in overruling the motion on behalf of said appellant Le Crone, to dismiss the Bill of Complaint for want
106 of jurisdiction.

6. And in finding and decreeing that the claim by plaintiff of equitable title to the moneys now remaining in the Treasury is established by the evidence, and that appellants have no valid right, title or interest therein except as trustees for the plaintiff; and in decreeing that plaintiff's right and title to such moneys is absolute and that plaintiff is entitled to receive payment thereof, subject to the supposed attorney's lien mentioned in that final decree.

7. And in finding and decreeing that said attorneys are entitled to payment of $3,652.31, or any sum, out of said moneys.

8. The court erred in enjoining and restraining appellants from asserting any claim of right, title or interest in or to the aforesaid moneys; and from making any demand or claim against the United States or any officer thereof.

9. And in enjoining and restraining the Secretary of the Treasury and the Treasurer of the United States from delivering any warrant or order for the payment thereof to appellant Le Crone.

10. The court erred in appointing a receiver of said moneys; and in directing and enjoining said Secretary and Treasurer to pay said moneys in to the hands of such receiver.

11. The court erred in proceeding in the cause as if it had jurisdiction of these appellants and of the subject matter of the suit.

GEO. N. BAXTER,
MOSES E. CLAPP,
Appellants' Attorneys.

107 *Designation of Record by Appellants The Orinoco Company, Limited, and John W. Le Crone.*

Filed February 23, 1923.

* * * * * * *

To the Clerk of said Court:

Please take notice that the appellants, The Orinoco Company Limited and John W. Le Crone, hereby designate the parts of the record which they desire to be included in the transcript. That is to say;

1. Plaintiff's Bill of Complaint, excepting the descriptions of defendants other than the plaintiff and these two defendants on pages 1 and 2 of said Bill. Excepting also the last 19 lines on page 4 and

all of pages 5, 6, and 7 and all of page 8 of said Bill down to section 18 of said Bill. Excepting also the last 6 lines of said page 8 beginning "And plaintiff says," and all of page 9 and the first 16 lines of page 10 of said Bill. Excepting also sections 32, 33, 34, 35 and 37 of said Bill. Excepting also the affidavit verifying said bill on page 25 thereof.

2. The Order of Publication and proof of service thereof.
3. Notice of Motion to quash such service.
4. Order denying same.
5. Answer of defendant Le Crone; excepting section VIII thereof.
6. Answer of the Orinoco Company Limited, excepting the last paragraph thereof in answer to paragraph 20 of plaintiff's Bill. (On p. 1.) Excepting also the last 8 lines of section V, and the last 10 lines of section X of said answer.

108 7. Motion and Order striking out section II of said Answer of Le Crone.

8. Memorandum of Chief Justice filed Jan. 30, 1923.
9. Final decree herein. (Filed Feb. 3, 1923.)
10. Assignment of errors.

Very respectfully,

GEO. N. BAXTER,
MOSES E. CLAPP,
Attorneys for Appellants.

Dated Feb. 20th, 1923.

Copy of this received but right to except thereto reserved.
WILLIAM R. HARR.

Feb. 21/23.

Designation of Record by Plaintiff-Appellee.

Filed February 28, 1923.

* * * * * * *

To the Clerk of the Court:

Please include in the transcript on appeal the following parts of the record in the above-entitled cause, namely;

1. Bill of complaint and fiat of McCoy, J.
2. Written suggestion filed Nov. 21, 1914—order of Court of Nov. 30, 1914.

3. Memo. of entry of June 19, 1917—affidavit as to non-
109 residence.

4. Answer of Deft. No. 5, to Bill. (Orinoco Company, Ltd.)
5. Answer of Deft. No. 11, to Bill. (John W. Le Crone, Rec.)
6. Memos. of Sept. 14, 1917 entries as to Proof of Publication.
7. Memo. of entry of Sept. 14, 1917 as to affidavit of mailing.
8. Memo. of decree pro confesso entered Sept. 14, 1917.
9. Decree entered April 10, 1918, (M. 104, p. 253).

10. Decree entered Nov. 19, 1917, (M. 104, p. 115).
11. Stipulation filed March 24, 1919.
12. Stipulation filed Sept. 23, 1919.
13. Order entered Oct. 3, 1921, (M. 114, p. 138).
14. Amendment to Bill and Fiat of Stafford, J., filed Oct. 3, 1921.
15. Motion to dismiss Bill filed April 4, 1922.
16. Order entered April 21, 1922 (M. 117, p. 201).
17. Decree entered Oct. 23, 1922 (M. 116, p. 272).
18. Suggestion filed Oct. 25, 1922, by Defts. 13, 14 and 15.
19. Memo. of entry of Feb. 8, 1923, as to approval and filing of Receiver's bond.
20. This counter designation.

EDWARD S. DUVALL,
WILLIAM R. HARR,
Attorneys for Plaintiff-Appellee.

110 * *Assignment of Errors by Appellants Andrew W. Mellon and Frank White.*

Filed March 12, 1923.

* * * * * * *

And now come Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, defendants (appellants), and assign as error the following, upon which they and each of them will rely:

1. The Court erred in overruling the motion of William McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, to dismiss the bill filed by the plaintiff.

2. The court erred in not sustaining said motion to dismiss, and in not dismissing the bill.

3. The Court erred in finding and holding and adjudging, "upon its own motion and with the consent of plaintiff," that the remainder now in the Treasury of the United States of the moneys received by the United States of America from the United States of Venezuela by virtue of the Protocol of September 9, 1909, amounting to $56,250, is subject to an attorney's lien (vide 4) in favor of the defendants Jackson H. Ralston, Frederick L. Siddons and William E. Richardson, formerly copartners practicing law under the firm name of Ralston, Siddons and Richardson, for the sum of Three Thousand Six Hundred and Fifty-two and 31/100 Dollars ($3,652.31), for professional services heretofore rendered by them in procuring said award, and that said defendants are entitled to payment of said amount out of said remainder of said award.

4. The court erred in adjudging, ordering and decreeing
111 that the plaintiff's right and title to the remainder of the moneys aforesaid, now in the Treasury of the United States is complete and absolute, and that said plaintiff is entitled to receive

payment thereof, subject only to a lien for the attorney's fee aforesaid.

5. The court erred in adjudging, ordering and decreeing that Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, their successors, attorneys, agents and employees, be and are perpetually enjoined and restrained from delivering any warrant or order for the payment of the balance of the aforesaid moneys now remaining in the Treasury of the United States, and from making payment of said moneys, by warrant or otherwise, to any person except to the receiver or receivers appointed by said court in this cause.

6. The court erred in adjudging, ordering and decreeing that James M. Proctor be appointed to serve as receiver in this cause to receive the aforesaid moneys from Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, and forthwith to disburse and pay over the same to the parties by said court adjudged entitled thereto.

7. The court erred in further ordering and decreeing that, Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, be directed and enjoined to pay forthwith into the hands of the receiver appointed by said court in this cause the aforesaid moneys and in authorizing and directing said receiver to execute and deliver a due acquittance and release to said officials of the Treasury Department upon receipt of payment of said
112 moneys.

8. The court erred in not holding that it was without jurisdiction over Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, or either of them, to grant the relief prayed in the bill of complaint filed in this case or to subject said defendants, or either of them, to its control, order or direction in the performance of their official duties in this specific matter, or any other like matter, as Secretary of the Treasury and Treasurer of the United States, respectively.

9. The court erred in not holding that the complainant in this cause is without status to pray, and that said court is without jurisdiction to grant the relief prayed for in said bill against these defendants or either of them.

10. The court erred in entering the final decree herein in so far as the same in any way affects these defendants, or either of them.

RICHD. R. McMAHON,
Solicitor of the Treasury;
THOMAS LACK,
Assistant Solicitor of the Treasury,
Attorneys for Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, Appellants.

113 *Counter Designation by Appellants Andrew W. Mellon and Frank White.*

Filed March 12, 1923.

* * * * * * *

To the Clerk of the above-entitled court:

The clerk, in preparing the transcript of record for the Court of Appeals in the above-entitled cause, will please include the following:

1. Motion of defendants McAdoo and Burke to dismiss bill.
2. Order of June 15, 1917, overruling motions to stay proceedings and dismiss bill.
3. Answer of defendants McAdoo and Burke to bill of complaint filed July 27, 1917.
4. Order substituting Frank White, Treasurer of the United States, as party defendant.
5. Note of service of spa. to answer upon defendant Mellon.
6. Answer of defendants Mellon and White to bill of complaint.
7. Note of appeal on behalf of defendants Mellon and White.
8. Assignments of error on behalf of defendants Mellon and White.
9. This counter designation.

RICHD. R. McMAHON,
Solicitor of the Treasury;
THOMAS LACK,
Assistant Solicitor of the Treasury,
Attorney for Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States.

114 Service of above counter designation acknowledged this 10th day of March 1923.

WILLIAM R. HARR,
EDWARD S. DUVALL,
Attorneys for Plaintiffs.

Memoranda.

March 20, 1923.—Statement of evidence submitted by Baxter.
March 21, 1923.—Stipulation to substitute Statement of evidence, and Statement submitted by E. S. Duvall, Jr.

Counter Designation of Record by Plaintiff-Appellee.

Filed March 21, 1923.

* * * * * * *

To the Clerk:

In making up the Transcript of record on appeal, please include the following:

Decree of February 3, 1923, discharging rule to show cause.

EDWARD S. DUVALL,
WM. R. HARR,
Attys. for Plaintiff.

Memoranda.

March 23, 1923.—Substituted statement of evidence signed and filed.

115 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 114, both inclusive, to be a true and correct tanscript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 33031 in Equity, wherein The Orinoco Iron Company is Plaintiff and William M. Safford *et al.* are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of April, 1923.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

116 In the Supreme Court of the District of Columbia.

Equity. No. 33031.

THE ORINOCO IRON COMPANY, Plaintiff,

vs.

WILLIAM M. SAFFORD et al.

Statement of the Evidence.

The following is the substance of the evidence adduced in this cause on final hearing before Chief Justice McCoy, at the November Term of Court, 1922, on behalf of the plaintiff and defendants Orinoco Company, Limited, and John W. Le Crone, as Receiver for said Company:

DAVID M. LAWSON, a witness for the plaintiff, testified (by deposition) as follows:

Direct examination:

I am a civil engineer, 65 years old, residing in New York. I graduated from Cornell University in 1873 and have been practicing my profession ever since.

I first went to Venezuela in 1888 to examine the Imataca Mine in the interest of a London firm who wished to purchase the property. I reported that it was a good purchase.

In 1895 I went back to Venezuela as superintendent and mining engineer for an English concern, the Orinoco Iron Syndicate, which had been formed for the purpose of exploiting the Imataca Mine. We installed machinery, opened up the mine, relaid the railroad and shipped some ore. Mr. Turnbull, the Manager of the mine for this English concern, attempted to ship some contraband on the vessel carrying their ore and the vessel and her cargo and the mining machinery were seized by the Venezuelan customs authorities.

I continued in charge of the mine for the English concern until August, 1897, and remained in charge thereafter for the Venezuelan Government until March, 1899, when Mr. Roeder and other representatives of the Orinoco Iron Company, came down and employed me to act as their superintendent and engineer and to do such things as might be necessary for the benefit of their interests.

117 I cleaned up the place for the Orinoco Iron Company, relaid the railroad and got all the machinery in shape and put the mine in proper order.

I had about fifty men. We mined the ore, put in turn tables and opened up the mining faces, which is called "stripping."

I cannot tell exactly how much ore we took out. We made a shipment of ore to Sparrows Point, Maryland. There was one vessel that would carry 3,500 which was loaded half full. She could

not get in and out again with 3,500 tons. She drew too much water.

I continued to actively mine and ship ore until the following December (1899) when I left and Mr. Harold Verge was put in charge of the mine.

I couldn't tell you even approximately how much stripping was done. There was a lot of it, hundreds of feet.

By increasing facilities and putting in the necessary machinery we could have mined almost any quantity.

I should say there was an enormous quantity left there all stripped—fully five hundred thousand tons.

My payroll from March until the following December was less than $9,000, not including my salary of $250 a month.

The Steamer Perla, referred to in plaintiff's bill, was owned partly by the Orinoco Iron Company, which paid $1,000 of its purchase price.

I was not there when plaintiff ceased operations; they stopped operations after I left.

There was more or less trouble concerning the title to the property while I was there for the plaintiff. Officials of the Government, railroads, officers and men would come and give me notice or verbal instructions which I disregarded.

Plaintiff was obliged to expend certain sums for the purpose of defending the title to the property, about $20,000, at the time Mr. Lockwood came down.

While I was there I was in trouble with only one insurrection. I didn't take much stock in it. There was one leader there named Ricardo who came in with a lot of men. He came in the place and was there one day or a day and a half and wanted to get some men but he didn't get them.

Cross-examination by Mr. George N. Baxter, appearing as attorney for the defendants Orinoco Company, Limited, and its receiver, John W. Le Crone:

The Imataca Mine lay in a series of hills. There was a
118 vein of ore 3,000 feet long on the first two hills. The maximum width of the vein was between eight and nine feet, about fifteen feet across the tip. The vein was about 300 feet deep.

We stripped fully five hundred feet of this vein, may be more. The stripping consisted in taking off the soil; the vein would outcrop; cut off all this down to a certain depth and expose the vein.

I mined ore from the main line opening, about 60 feet long, and from an opening to the east and one to the west of that. We got out about 1,800 or 2,000 tons.

It was superb ore, within two or three per cent of the maximum, which is 69%.

The amount paid for mining, including supplies, was about $9,000 from March to December, 1899. The total for labor and supplies was a good deal more than that because some money was paid to Ellis, Grell & Company.

By Mr. Harr:

Q. From the mining and stripping that you did at the Imataca Mines during this period from March to December, 1899, were you able to form a fair judgment, or some judgment, as to the amount of iron involved in this locality, as an experienced mining engineer? A. Yes.

Q. What did those indications lead you to believe as an experienced mining engineer?

Mr. Baxter: Objected to on the ground that the witness has not shown himself qualified to express an opinion on that subject.

Q. You were a mining engineer? A. Yes.

Q. Of long experience? A. All my life.

Q. And you were familiar with iron mines and iron property? A. More or less, yes.

Q. Give your judgment.

Mr. Baxter: Same objection.

A. Taking it all in all, I think there were in the neighborhood of two million five hundred thousand tons in that one hill.

119 BENONI LOCKWOOD, a witness for the plaintiff, testified (by deposition) as follows:

Direct examination:

I am an attorney at law, with offices in New York City. I helped organize the plaintiff company in 1897. The company was organized for the purpose of taking over and exploiting the iron ore rights in Venezuela that were then owned by the Orinoco Company, Limited. The iron ore was situated on the Orinoco River about 100 miles from its mouth.

I was counsel for the plaintiff and its Secretary for a time.

Exhibit "D" attached to plaintiff's bill is a copy of a contract between plaintiff and the Orinoco Company, Limited. I signed said contract on behalf of the plaintiff company.

After said contract was entered into a Mr. Root was sent by plaintiff to Venezuela to examine certain property near Santa Catalina where it had been represented that ore existed. He reported that said ore was practically non-existent at that place. In the meantime, Mr. James E. York and Mr. A. B. Roeder, President and Vice-President of the plaintiff company, had gone to Europe for the purpose of finding an English market for the ore that they were expecting Mr. Root to locate in sufficiently large quantity to commence shipping almost immediately, as the deposit had been represented to be in almost solid formation well above the surface of the ground, so that during the first stages of mining, and for sometime, it would be possible to break the ore down from above and not mine it by digging underground.

Several tentative contracts had been made by Mr. York with

English concerns or ore users for the iron ore on this European trip of Messrs. York and Roeder when Mr. Root made his report.

Thereupon the matter was taken up by the plaintiff with the Orinoco Company, Limited, to find out what answer the latter had to make to Mr. Root's report and what they were going to do about the expense and loss to which the Iron Company had been put, the net result of which was that the Orinoco Company, Limited, acknowledged that the proof of the existence of the ore at Santa Catalina was not sufficient to authorize or encourage anyone to continue mining at that point, and an agreement was made that they would immediately put the Orinoco Iron Company in possession
120 of a known deposit called the Imataca Mine, that was situated at the most easterly part of the concession and that had already been worked upon, and to a certain extent defined by various engineers. This was in the winter of 1897-98.

Exhibit "E" attached to plaintiff's bill, is the agreement which was the result of the foregoing conferences and in order to give the plaintiff company more time to carry out its contract, it being conceded that a large part of the delay was due to the misapprehension or misstatements or mistakes that had been made by the Orinoco Company, Limited, in regard to the location of a large body of iron ore on its property at Santa Catalina.

The Orinoco Iron Company had demanded damages or compensation for the amount of money they had invested and spent and the damage sustained by reason of the misinformation that the Orinoco Company, Limited, had given it on which they had asked us to rely and on which we had relied. They denied in the discussion at Faribault that they had deceived us, and there was a great deal of rather violent altercation on both sides in regard to the situation, "but finally when the smoke cleared away it was practically conceded that their statements made to us in regard to the iron ore had been so grossly exaggerated that it was up to them to put us in possession of some part of the iron company's properties that they advertised and stated that they owned, and the agreement to put us in possession of the Imataca Mine was the result."

Subsequently Mr. James E. York, Mr. David Lawson, a Mr. Bailey, Mr. A. B. Roeder, Mr. John Sheppard, of Boston, and some others visited the property. Mr. Bailey was a well-known mining engineer and made a very elaborate report on the Imataca property. Mr. Bailey was paid for, if I remember correctly, by the Orinoco Iron Company people.

In September, 1898, Mr. George N. Baxter representing the Orinoco Company, Limited and myself representing the Orinoco Iron Company were sent down to Venezuela to arrange for obtaining possession of the Imataca Mine on behalf of the Orinoco Company, Limited, and the Orinoco Iron Company as its associate, said mine at that time being worked by an English Syndicate, of which Mr. George Turnbull, an American, was the promoter.

The property had been confiscated and offered for sale by
121 the Government of Venezuela on account of a penalty given against the English company as the result of their attempt-

ing to land material and machinery at the Imataca Mine without passing them properly through the Custom House.

Possession of the Imataca Mine was obtained through the purchase by Mr. Baxter on the sale that was held at Ciudad Bolivar, at which time Mr. Baxter paid about $20,000. The title so obtained was confirmed by the Venezuelan court.

The Orinoco Iron Company, plaintiff, then took possession of the Imataca Mine and began to operate it. I do not remember now what amounts the Orinoco Iron Company expended in clearing up the title to the Imataca Mine and securing possession thereof, but it was to spend whatever was necessary to be spent in order to arrive at that conclusion. It paid my expenses and fees, with the exception of a few hundred dollars that was owing me when I severed my connection in 1900 or 1901.

I remember having seen either a copy, or having been informed, of the resolution adopted at a meeting of the Board of Directors of the Orinoco Company, Limited, held at Faribault, Minnesota, August 5, 1899, same being introduced in evidence as Plaintiff's Exhibit Lockwood No. 2.

This resolution was communicated to the Orinoco Iron Company. It was the result of an agreement made through letter or conversations with them.

The Orinoco Iron Company had already expended about $20,000 or perhaps more at the time that the agreement was made, and the figures of $20,000 was settled on as bringing the matter up to date, and from that time on there was quite a large number of other expenditures made in connection with the carrying out of the obligations that the Iron Company had under its contract.

The $20,000 expended up to that time represented my own expenses and those of Messrs. Root, Roeder and York. It was
122 simply the expenses in connection with the acquisition of title and possession of the Imataca Iron Mine and had no connection with the operation of the mine or the shipping of ore.

At the time the Orinoco Iron Company was given possession of the Imataca Mine it seemed very easy to obtain the money to operate it, provided the deposit was as represented.

I believe there were some contracts made with American interests as well as English for the disposition of the ore while I was connected with the plaintiff company, one, I believe at Sparrows Point, Maryland.

Cross-examination by Mr. George N. Baxter, appearing as attorney for the defendants Orinoco Company, Limited, and its Receiver, John W. Le Crone:

I had always supposed that the expenses of the York expedition to which I have referred were paid by the Orinoco Iron Company, but I don't know.

Possession of the Imataca Mine was taken almost immediately after the judicial sale in Ciudad Bolivar in 1898, by parties that represented the Orinoco Company, Limited, and the Orinoco Iron

Company. Soldiers were sent down there at the time we purchased the property in order to get the other people out.

The principal work in defense of the title to the Imataca Mine was done prior to August 5, 1899. There was no considerable amount expended after that time as I remember.

My recollection is that I was Secretary for the Company for only about six months.

Redirect examination:

My testimony has reference to the amounts expended by the Orinoco Iron Company during the period I was connected with the Company, which was down to about 1900. I am not familiar with anything that occurred thereafter except by hearsay.

Mr. James E. York succeeded me as Secretary of the company. He is dead. Mr. James E. York was a mining engineer or operator of iron works. He was manager of an iron works somewhere near Duluth.

An estimate of the value of the iron ore deposit at the Imataca Mine was made by an expert, whose name I don't recall. He was a citizen of Ciudad Bolivar. The report had to be made by two men before the property was put up at auction, and that report showed that the minimum value put on it was several million dollars. My understanding was that if the property contained anywhere near the
123 iron ore tonnage that it was supposed to have, it would be worth a great many millions of dollars.

So far as I know, there were no other reasons, besides local conditions, such as insurrections, etc., why the Orinoco Iron Company could not have been able to proceed successfully in mining and selling the ore.

124 ALBERT BART ROEDER, a witness for the plaintiff, testified (by deposition) as follows:

Direct examination:

I am 55 years of age and reside in New York City.

I have been a mine owner and mining operator the greater part of my life.

I was one of the organizers of the Orinoco Iron Company, plaintiff, and engaged in its affairs as its President.

The original incorporators were James E. York, Benoni Lockwood, Frederick Prentice, my bother, A. L. Roeder, and myself.

The Orinoco Iron Company was organized to develop and operate iron mines on the Orinoco River known as the properties of the Orinoco Company, Limited, the defendant in this suit.

I am familiar with the first contract between the Orinoco Company, Limited, and the Orinoco Iron Company, a copy of which appears as Exhibit "D" to plaintiff's bill, and signed the original contract on behalf of the Orinoco Iron Company.

We were induced to enter into said contract by the representations of the Orinoco Company, Limited, that there was a large tonnage

of very high grade hematite iron ore,—described as a mountain of iron—a billion tons on tide water at Santa Catalina, Venezuela, on the Orinoco River, accessible to ocean-going steamers.

Relying upon these representations we entered into said contract and immediately proceeded to send Mr. Root, an engineer—a practical mining man—to take possession for the company and to verify these representations. Mr. Root had been recommended as a practical iron man and satisfactory to Mr. James E. York of the Orinoco Iron Company, and Mr. Donald Grant and Mr. Clement, officers of the Orinoco Company, Limited.

Mr. James E. York was "an iron master" who operated blast furnaces and handled iron ore in his mills. He was identified with mills first in England and then in Portsmouth, Ohio, associated with his brother, Levi D. York, and then as the owner or co-owner of blast furnances at Ashland, Wisconsin. He was actively engaged in the affairs of the plaintiff company.

Mr. Root cabled Mr. York and myself in London that the mountain of iron ore did not exist. We had gone to London to ascertain the commercial value of this grade of iron ore in the English
125 market, and to arrange for the transportation of ore shipments and deliveries of the product to consumers. This was about a month after the contract of July 22, 1897 with the Orinoco Company, Limited, was signed.

Specimens of iron ore of probably the highest grade hematite had been submitted to us by the Orinoco Company, Limited, and represented as coming from the Santa Catalina district.

Mr. Root reported that there was no ore at all at Santa Catalina. We cabled immediately for Mr. Root to come to London.

We had arranged for shipments of cargoes at $2.50 per ton. This rate covered the freight from the loading station at Santa Catalina to Cardiff, Wales. We had contracts for the sale in England of all the tonnage we could supply up to a million tons per annum of that grade of ore, at a price, on a 60% basis, of $5.50 per ton, plus 10 cents a unit for each per cent above 60%; that is, if the ore contained 64% of metallic iron, we were entitled to the $5.50 plus 40 cents.

Upon receiving Mr. Root's report that the ore did not exist at Santa Catalina we immediately ceased endeavoring to consummate the business in London and proceeded at once to New York. A meeting of the Board of Directors was called and a conference with the officers of the Orinoco Company, Limited, at Faribault, Minnesota, was arranged, which was attended by Mr. James E. York, Mr. Benoni Lockwood, our attorney, and myself, the representatives of the Limited Company being its President, Mr. Donald Grant, its Treasurer. Mr. T. B. Clement, and Mr. George N. Baxter. After a sharp difference of opinion between Mr. Root and Mr. Grant's nephew, who had made the report of the existence of this mountain of iron ore at Santa Catalina, it was finally proposed by us that we appoint an engineer and the Limited Company appoint an engineer and these two then agree on a third, the three to proceed to the property, and if they reported that there was a million tons—not a bil-

lion—we would go on and undertake the development and shipmen
of the ore, if not, then the Limited Company was to refund the ex
pense that we had been put to and the loser to pay the expenses o
the engineers.

Up to that time we had expended approximately $10,000, and th
examination to be made should not exceed another $10,000. I
reply to this suggestion, the Limited Company recommended anothe
plan, namely, that we should select our own engineer, an
126 that as they had absolute confidence in the integrity of Mr
James E. York (the Treasurer of our Company), who wa
familiar with the Mesaba Range, had operated Ashland furnaces
they would select him as their representative, and whatever the de
cision they would abide by it and be satisfactory. It was finally de
cided to have the property examined by our engineer and Mr. York
to be accompanied by Mr. Grant's nephew, the engineer who ha
previously reported concerning the mountain of iron, who was t
show the property to them.

The next step was the proceeding to the property in Februry, 1898
of Mr. York, Mr. J. Trowbridge Bailey, the mining engineer and
graduate of Freiburg, Germany, and myself. We had chartered
yacht and took aboard also one of our leading stockholders, a capi
talist from Boston, Mr. John Sheppard, and a number of others no
connected with the company. Mr. York had preceded us to th
property. The boat was chartered in order to make soundings an
establish the route of cargoes through the Boca Grande or mai
mouth of the Orinoco to the depth of 14 feet. The only othe
clearance was through a smaller river with a depth of only eight feet
The iron Company required a depth of at least 14 feet to insure com
mercial cargo shipments.

We arrived at Santa Catalina and were there met by Mr. York an
the engineer and Mr. Boynton, the resident manager of the Limite
Company. The next day with tools and equipment we cut our wa
through to the property of the iron mine which was about three mile
from river transportation at Santa Catalina. We came to the plac
of the alleged iron property and found no mountain whatever
There was an elevation of not to exceed 70 or 80 feet, a short trenc
and prospect hole not to exceed the depth of 40 feet, with no iro
showing whatever, and it was so admitted by all at Santa Catalina

When we returned to the Limited Company's quarters, we were in
formed that although there was no ore at Santa Catalina, that ther
was a very fine deposit located at Manoa, called the Imataca Min
which was also located on the Limited Company's concession. W
proceeded to examine the Imataca Mine. We found there a ver
healthful showing; very good ore. A Mr. David Lawson was i
charge. After a conference with Mr. Boynton, Mr. York and Mr
Bailey, a joint telegram was sent to the Limited Company i
127 which it was stated that ore did not exist at Santa Catalina
that if the Limited Company would put us in possession of th
Imataca property we would go on with our contract.

We were met in New York, as arranged, I believe, by Messrs. Grant
Clement and Baxter, representing the Limited Company, and ther

appeared to be a disposition on their part to do everything that possibly could be done to obtain the title to the Imataca property. It was frankly stated by the officers of the Limited Company that it had been put to large expense in their previous operations at Santa Catalina, and that at the time they were not in position to meet a large expenditure for the acquiring of title and possession of the Imataca property. It was agreed that as we the Iron Company were in funds we would advance the amount of money necessary to perfect the titles through the courts of Venezuela, where some suit or suits were pending, and that the Limited Company would buy in the Imataca property at a sale, I believe at Ciudad Bolivar. At that time I think it meant an expenditure of approximately $20,000.

Q. Was that arrangement carried out? A. Yes. Messrs. Baxter, attorney for the Limited Company, and Lockwood, attorney for the Iron Company, soon thereafter proceeded to Venezuela, South America, and the purchase of the Imataca property was consummated. Both of these gentlemen co-operated to accomplish this result.

Q. Who provided the money for the expenses, the $20,000? A. We provided the money for Mr. Lockwood, and Mr. Baxter's company provided the money for him. During the interval of several months I had personally gone to Caracas and cooperated in obtaining possession of the property in order to enable the Iron Company to operate. During this time we could not operate or ship. The contract was therefore amended so as to commence upon our occupation and operation of the property.

Exhibit "E" to plaintiff's bill is a copy of said supplemental contract extending the time to begin operations.

The expenses of Mr. Benoni Lockwood, our other lawyers and representatives, as well as court and litigation expenses in obtaining possession and clearing up the title to the Imataca Mine during a period of over two years was over $30,000. We never really got an undisturbed possession of the property.

After the property was purchased we engaged laborers from Barbadoes and Port au Spain, shipped machinery and supplies to the property, and commenced the active development of the mine.

David Lawson, who had been previously in charge of the Turnbull interests, was put in charge as manager and superintendent of the Iron Company.

Plaintiff opened up, stripped and placed ore in sight, built dock facilities, improved the railroad from the mine to the loading
128 station at the Corosima River, and continued work until stopped by notices and adverse Turnbull interests landing on the property, by the revolution in which General Andrade was unseated, after which no work or shipping could be done, during which the "Tresco" was seized with the cargo.

There was approximately 5,000 tons of iron ore mined and placed at the loading station, about 1,500 tons of which were shipped to Sparrows Point, and 50 or 100 tons were sent as a sample cargo to England.

The shipment to Sparrows Point was made to the Maryland Steel Company, this shipment arriving January 6, 1900.

Q. How much ore was mined or stripped down there in the Imataca Mine, do you recall? A. There were pretty nearly 4,000 feet stripped.

Q. What do you mean by stripping? A. At intervals of 200 or 300 feet a tunnel was driven into the main vein at about 200 feet below the outcrop. The vein would then be stripped or exposed by a trench on the surface for possibly a hundred feet; then again at a distance of two or three hundred feet it would be cut again and stripped on the surface. The vein was exposed in this manner at intervals, to what is termed the ravine, a distance of about 4,000 feet. At the ravine the vein was exposed and did not require further stripping, measurements were made of ore tonnage above the river and water level; we were not interested in any ore at that time below the water level because that would mean pumping.

Q. What was the width of this vein that you have been talking about? A. From 8 to 10 feet.

Q. What was the depth of it? A. The depth from outcropping to water level averaged 200 feet.

Q. What proportion of this vein was above the tidewater? A. All that which I have described.

Q. Approximately how many tons did this vein contain, according to your estimate, based on this opening up and stripping? A. Approximately 500,000 tons.

The concensus of opinion was that there was a million tons of ore in No. 3 vein. No. 2 vein was not at work at the time I made my examination. At that time we had sufficient ore to contract half a million tons.

Our contract with the Maryland Steel Company was for $5.00 per ton based on 60% metallic iron contents, plus 10 cents per unit above 60%. As the ore averaged 67% the price at Sparrows Point was $5.70 per ton. If the price was over $5.00 we would get $2.00 per ton net profit on American shipments and $2.50 per ton on shipments to England.

Plaintiff had contracts for the purchase of this ore and there was no question as to the salability of ore of this character. The Bank of England assays were even more favorable than the Maryland Steel Company, whose assays were 67.56% in metallic iron, the Maryland Steel Company paying for the ore on this basis.

129 The Iron Company continued to operate the Imataca Mine under the most terrible conditions. If it was not litigation it was revolution, in addition to natural difficulties such as consents of the Venezuelan Government for survey and buoys at the mouth of the Orinoco River, entrance and clearance of cargo ships, machinery and supplies.

There were continuous difficulties on account of litigation and revolutions, and during these difficulties the Iron Company was

obliged to fight to maintain possession against adverse claimants—the Turnbull Syndicate.

Plaintiff was obliged to import labor from the Barbadoes and Trinidad because they were British subjects. Native laborers were seized by both revolutionists and Government forces.

Our payroll up to April 30, 1900 was $34,501. For January, February and March, to the 30th of April; for transportation of men $2,012; wages $19,060.54.

The capital required by plaintiff was strongly underwritten. Messrs. John Sheppard, August Belmont, John E. Searles were interested. $250,000 was available for mining, shipping and development purposes, and the Iron Company were to be placed and kept in peaceable possession.

Plaintiff was forced to discontinue operations by being physically driven out of the property by the revolutionists. That was the end. Before that the Limited Company had been ousted and was unable to maintain our peaceable possession.

Plaintiff had all the money required for peaceful operation of the property, but no more funds for the Limited Company's litigation or fighting revolutions.

Plaintiff was in frequent communication with the Limited Company during this period urging them to get title and possession for us so that we could work.

Toward the end plaintiff received a notice from the Limited Company that they had cancelled its concession on the ground of its not having carried out its contract. Plaintiff replied and protested to that, and the Limited Company withdrew its notice of cancellation. Plaintiff heard no more about termination of contract until March, 1901, and about that time the Limited Company notified plaintiff that the contract had been terminated. At that particular time the entire concession of the Limited Company had been cancelled by the Venezuelan Government.

130 The date of the first notice received by plaintiff from the Orinoco Company, Limited, of the termination of its contract is fixed by a letter signed by me on behalf of the Iron Company dated June 19, 1900 (Roeder's Exhibit No. 2). This letter fixes the date apparently of the notice as an act of the Limited Company's Board of Directors as of March 6, 1900. It refers to a letter received from Mr. Clement, as of date March 19, in which Mr. Clement asks Mr. Kyle, who was Mr. Baxter's secretary, to see that the Iron Company was not needlessly exercised by the matter of the notice; that the contract of July 22nd provided that the Iron Company should designate the place of payment of royalties, and somebody discovered that this had not been done. The action of March 6th was simply to supply this oversight.

Q. Did the Iron Company owe the Limited Company anything on account of royalties at the time this notice of the termination of the Iron Company was sent by the Limited Company in March 1900? A. Emphatically, no. To explain, had we been able to ship under our contract and had we shipped 400,000 tons, the advance

of $20,000 which was made on account of the litigation protecting titles to the property, would have paid the royalties on the 400,000 tons; in point of fact, our litigation expenses from start to finish, ran over $30,000, without being able to operate and ship.

Said letter of June 19, 1900, addressed to the Orinoco Company, Limited, and signed by the "Orinoco Iron Company, A. B. Roeder, President," (Roeder Exhibit No. 2) was sent in reply to said notice of March, 1900 of the termination of plaintiff's contract with the Orinoco Company, Limited.

At that time (March, 1900 to June 19, 1900) the Orinoco Company, Limited, was not in possession of the concession or in position to give plaintiff possession of the property.

Plaintiff was forced to suspend operations in the spring of 1900.

In October, 1900, after plaintiff was forced to suspend mining operations, it made complaint to the State Department at Washington about conditions in Venezuela that were preventing it from operating through telegrams and personal visits of its representatives. (Roeder's Exhibits 2, 3, 4, 6 and 7 identified by witness and introduced in evidence.)

Plaintiff's efforts to regain possession of the property continued until 1901. (Letter from Department of the Navy, Bureau of Navigation, addressed to A. B. Roeder, President, Roeder's Exhibit No. 6, with its enclosure, Roeder Exhibit No. 7 identified by witness and introduced in evidence.)

131 The statement of expenditures, aggregating a total of $173,908, set forth in paragraph 22 of plaintiff's bill of complaint in this case, is correct. All of this and more is shown by actual records and vouchers of money expended legitimately. According to the last statement of the books of the company the Steamer "Perla," referred to in plaintiff's bill, cost plaintiff about $1,400.

After plaintiff was forced to cease operations in the spring of 1900, no foreign companies were operating there at all. Revolutionists had succeeded—Castro was in power. Castro lasted 5 or 6 years after that.

Q. What was the attitude of the plaintiff company with respect to resuming operations down there? A. We were to operate the minute we could operate. We were awaiting the time when we could proceed to work.

The plaintiff company considered itself a part of the award made by Venezuela referred to in the bill, and filed a claim with the Secretary of State to receive a part of that award through its attorneys, Delmas, Towne & Spellman, and Griggs, Baldwin & Baldwin, said claim being signed and sworn to by the witness in the name of the Orinoco Iron Company as its President. (Witness identifies copy of petition filed with the Secretary of State which was introduced in evidence. (See page 60 hereof.) So far as I know the State Department took no action on this petition.

Q. Did the State Department reply at all to your petition; did they consider your petition? A. I cannot give the exact language. We claimed we were entitled to a part of the award, and demanded

that the amount of our claim should be apportioned to us. The Department stated and confirmed by one or more written communications, that while they would hold that amount, we must go to the Courts to urge a determination. I believe it was several months after the proceeding that the Department of State notified the company to hurry the court determination. * * * I was present when the Department of State announced their decision verbally, that we must go to the Courts to have the determination and for a reasonable time they would hold the fund without making any distribution. That was the decision. It was the Assistant Secretary of State to whom we were taken and as having this matter in charge.

Q. To recur again to the item of expenditure in paragraph 22 of the Petition of the plaintiff. I wish to call your attention particularly to the second item with reference to the expenses of engineers accompanying the engineering trip on the S. S. "Dolphin" in determining river measurements, location of bars, and laborers, stated as $10,000. Do you mean by that, the plaintiff paid the expenses of the Navy Department in that connection or what did you mean by that? A. For the additional expenses to which the company were put, to provide the surveying party with additional equipment, supplies, and other items, such as—we provided it through Ellis, Grell & Company, with supplies, with ice, with lighter, the lighter itself, which was lost, the company had to pay for, it foundered and ws lost while the survey was being made.

Q. Did the Orinoco Iron Company have a representative? A. Yes. And the additional expense of a personal representative who was sent from New York and accompanied the "Dolphin" to Port au Spain, and with power and authority to render *they* every assistance so that the survey should carefully be made, and that we should have the records of the depth of water over the bar and into
132 the property of the company.

Q. Who was that representative? A. Representative and assistant, Mr. M. L. Roeder, and an engineer whose name at this moment I do not recall.

Q. You can supply that later? A. Yes.

Q. Referring to the first item mentioned for the examination of engineers at Santa Catalina and Manoa, surveying and chartering the Boca Grande, $26,500—— A. I might state a little more in detail what we covered; in the item to which you refer are included the additional expenses of the company relating to the first trip made by the chartered boat, the "Penelope," at which time engineers Trowbridge, Bailey, Sheppard, and the party went over to physically make the trip in via the route over which the ore would have to be transported—that work consumed over two months, and the second survey and technical survey which I termed the government U. S. S. Dolphin trip, consumed over three months.

Q. What have you to say as to the third item set forth in Paragraph 22 of the complaint? A. May I refer back to this $10,000 item, as to the charter?

Q. Yes. A. The cost of the boat, including the crew of twenty, net crew, the engineer and doctor, was $10,000 for the use of the boat for the period, to which the individual members contributed personally all the cost of supplies and food during the entire two months.

Q. You are referring now back to your answer to the first item? A. Yes.

Q. As to the third item, the demurrage paid and freight on the S. S. "Mercedes," $12,000? A. That refers to the steamer "Tresco," the "Tresco" was seized at Manoa. Under our contract with the charterers the Iron Company were allowed five days for loading, their bill for each additional day, in addition to the charter, was $250.00 per day. The item of $12,000 is made up of the charter plus the demurrage and the additional expense in connection with the trouble with Venezuelan authorities who were on board, and who were finally notified that they would have the privilege of getting off at Point Barima, or else be taken to the United States and punished. Point Barima is some eight or ten miles I believe, off the mouth of the Orinoco River.

Q. The fourth item of $95,000 stated in paragraph 22 of the Plaintiff's Bill of Complaint, covers expenses incurred in the management of the business and the development of the mines at Manoa, including machinery, equipment, supplies and labor. You have testified to your knowledge of those expenditures having been made? A. Yes.

Q. That covered the salary of the Superintendent of the mines, labor, supplies, &c.? A. Yes.

Q. What amount of machinery and equipment was there down there put in by the iron company? A. Approximately from $8,000 to $10,000, consisting of steel rails, the usual mining outfit of blacksmith supplies, pick axes, tools, machettes, cables, hoists for docks and derricks; $10,000 would not cover it, including the material required for building loading stations, powder for blasting, and so forth.

Q. That was all put in by the Orinoco Iron Company? A. Entirely so.

Q. And that property was there when they were forced to quit operations? A. All there.

Q. It was seized by the authorities of the Castro government, or representative government? A. They took everything that was lost, surveyor's instruments, all technical equipment required for assays, and also the Perla launch.

Q. In addition to that, there were several thousands tons of ore which had been mined but not shipped. That they could not take, that was all transferred to the Orinoco Company, Limited, and other parties who were parties to this Protocol agreement? A. That is a legal question. I can not answer as to what the Orinoco Company Limited attempted to do as relating to the Orinoco Iron Company

133 Q. If that property was taken, it was your property? A. Yes, it was our property, bought and paid for.

Q. The last item stated in paragraph 22 of the Bill of Complaint is for legal expenses at Caracas, Ciudad Bolivar, and the attorneys fees paid in an endeavor to retain possession for the Orinoco Iron Company, $30,000. That was the cost of the defense of the company as I understand it, which you have testified to?

A. That would not cover the cost. That was the actual cost for the legal expenses, for the attorneys Benoni Lockwood, Carlos Leon,—I don't recall the name of the attorney at Ciudad Bolivar; nor did I include the charges of Messrs. Griggs, Baldwin & Baldwin, or any other attorneys. Nor did I include the expenses of my charge to the company of $1,000 a month during the time that I had to go to Caracas, that being a company charge.

Under date of March 8, 1901, the Orinoco Company, Limited, in letter to the plaintiff signed by Mr. H. T. Kyle, Secretary of said company, enclosed a notice and letter dated November 27, 1900, in regard to the termination of plaintiff's contract (Roeder Exhibit No. 8, identified and introduced in evidence). The witness replied, taking issue with the Orinoco Company, Limited, and denying their right to cancel said contract, as set forth in letter signed by him as President of the Company, under date of April 17, 1901 (Roeder Exhibit No. 9, identified and introduced in evidence).

At the time of this attempt to terminate plaintiff's contract, as communicated to plaintiff by aforesaid letter of March 8, 1901, the Orinoco Company, Limited, was not in a position to put the plaintiff company in peaceable possession of the Imataca Iron Mine.

At the time plaintiff was forced to suspend operations at the Imataca Mines in the spring of 1900 it was neither insolvent nor bankrupt. It abandoned operations simply because its contract for capital was based as an operating and shipping company; its funds were to be used for the development and prosecution of its mining and not to be diverted for a continuous legal expenditure to get hold of the property and maintain possession, the only protests that the men financially interested in the company and the directors made was that they would not submit to diverting money for this purpose. It at last reached a point where the Iron Company made demand that it be placed in possession and could operate.

Q. You were financially able to proceed if you had been given possession? A. We had firm underwritten contracts calling for an additional quarter of a million dollars over and above the amount that we had expended there—we will say over a quarter of a million. (Witness refers to books.) In fact, there was a balance available of over $300,000. You understand, for the uses and purposes underwritten, for operating and mining.

134 Q. In other words, if you had been put in peaceable possession, there was no financial reason whatever why you should not have gone ahead and made the profits you have testified to? A. None whatever.

Plaintiff would have made a profit on this iron ore under its contract with the Maryland Steel Company of $2.00 to $2.50 absolute profit per ton; about 50 cents more under the English contract.

Cross-examination by Mr. Baxter, representing the defendants Orinoco Company, Limited, and its receiver, John W. Le Crone:

I would like to change my statement as to the prices for which we could contract ore in England from 60% metallic content to 50% basis with an excess of 10% per unit.

There was money in plaintiff's treasury when it abandoned mining operation in the early part of 1900. I cannot state how much.

There was then due the plaintiff approximately $150,000 from John Sheppard and associates. Mr. Sheppard had been given an interest in the company (25,000 shares), supplying a total of $450,000, together with his associates. Plaintiff had the right to call upon Mr. Sheppard for this money at the time it ceased operations in the spring of 1900. Under the terms of the agreement with Mr. Sheppard $25,000 was to be paid at the time of the ensealing of the contract, $175,000 for operating the property, and a further payment of $250,000, making the total of $450,000. At the time plaintiff was forced to abandon operations Sheppard had paid in $45,000.

Plaintiff called upon Mr. Sheppard for further payment in the early part of the summer of 1900 and he refused, protesting that plaintiff must be in possession of the property and use the funds for operating, and that he would not put up any large amount until that was done. He said "if it could be done on an additional expenditure, if you can get the possession of the company and the Limited Company can give you possession you can go ahead to the extent of $20,000 more which I will personally give you, and then if you are in possession of the property, I will put in the balance of it."

Early in 1900 plaintiff was owing approximately $60,000, none of which has been paid.

Only a small amount, if anything, was owing to Mr. Lawson. I have since learned that while I was President he presented a claim and secured a judgment against plaintiff without the company ever knowing it. The amount of the claim presented was about
135 $1,000. It has never been paid.

We were then owing Ellis, Grell & Company quite a large amount for supplies and machinery, which has never been paid. I think their judgment was for about $7,000, which has never been paid.

Verge succeeded Lawson as superintendent of the mining operations at an agreed salary. He continued on until the Iron Company discontonued operations in March or April, 1900. I think he must have been paid.

When plaintiff abandoned operations in the spring of 1900 it left all the property it had, equipment, machinery and supplies, the Steamer "Perla" and another small boat. The Steamer "Tresco" did not belong to plaintiff but was under charter.

Approximately 3,000 tons of ore that had been mined by plaintiff was left on the dock.

This property could not be brought away, the boats were taken, and the officials from Ciudad Bolivar were in possession of the property and would not let anything be taken away.

It must have been late in the summer of 1900 that the final physical ouster of the Iron Company took place at Manoa.

Plaintiff announced the fact to the Orinoco Company, Limited, that it had been ousted and asked to be put in possession of the property. We announced in March or April—revolutions were going on; it was a physical impossibility to do anything, we were threatened daily, we had the "Tresco" seized; that is a different matter, that was revolution,—and then came the order of the court, that was the final nail in the coffin.

I first went to Venezuela in 1898. I made another visit in March or April, 1899.

In March or April, 1900 the Castro revolution had started. General Andrade was de facto president, Castro was the dictator, the revolutionary president. Revolutions started in the Andes and reached us early in 1900. They came down took one section after another; the news had hardly reached Caracas, but they got out the "Tresco", which was tied at Manoa; was loading in January, 1900, and at that time we had got the boat out. Some of the natives were already being impressed there and driven into the interior.

Either Verge or Schuman were the last men finally at the mine when the physical ouster took place in the latter part of the summer of 1900.

I cannot tell off hand who was in possession of the mine in
136 March, 1901. I don't think there was any foreign company in possession in 1901.

Q. Supposing that the Orinoco Company, Limited, in the months of January, February and March, 1901, were in possession of their entire concession, including Imataca; what was there to prevent you from resuming your mining operations? A. There wouldn't be anything.

Q. Did you make any attempt after you left the possession of Imataca in March or April, 1900, to go back and resume possession and re-commence your operations? A. Repeatedly, yes.

Q. State what those attempts were; what was the first attempt that you made to resume operations? A. Notified the parent company—we had begged and pleaded with the parent company to put us in possession of the property.

Q. When was that? A. It was continuously.

After we ceased operations in March or April, 1900 we both notified the Orinoco Company, Limited, and had the cooperation of Ellis, Grell & Company to use every means to get hold of the property again at Manoa.

We could not have gone on the property in May, June or July, 1900 and mined, because it was too hazardous an undertaking to

ship, to send boats and machinery to a place that was in such a turmoil as at Manoa and the Orinoco country; the Castro administration had stopped everybody from coming in there; not a foreign government of any kind could land.

Q. What did you expect the parent company could do to enable you to resume mining operations? A. To do the same as any landlord would do for his tenant, put him in possession of the property that he had leased and paid for.

Q. If he put you in possession, couldn't you put yourself in possession? A. No, nor could the Orinoco Company, Ltd.

Q. What was the use of asking them if you knew that they could not? A. Because the Orinoco Company, Limited, if you will recall, sent us a notice first on the question of royalty; why didn't we ship the ore,—and then the question of contract, because our contract called for us to produce, that we must produce and ship 500,000 tons per annum. Those are the questions, and we were not put in possession so that we could do this work.

* * * * * * *

Q. You have given all the reasons that you have to give for not attempting to resume operations on the Imataca mine between March and April, 1900 and the latter part of the summer, if not, state what they were? A. I believe I have, so far as I remember. I must truthfully say that also a reason why we did not go further was that on account of that arbitrary notice telling us that this entire lease of ours was arbitrarily cancelled, which affected our company. In other words, it did not make it any easier for us.

Q. You think if it had not been for that you would have gone on and resumed mining? A. One of the reasons, a contributing reason, not entirely so. If it had been entirely so we would not have gone on trying to obtain possession of the property.

Q. After you received the notice of a termination of the contract March 8, 1901, did you ever make any effort to resume your operations on the concession? A. Yes.

Q. What efforts did you make, and when? A. By taking issue with the parent company that we were rightfully in possession, that lease could not be cancelled by communicating to our representatives at the property to hold it as against any and everybody trying to land on the property.

137 Q. Did you have any representative on the property after March, 1901? A. Yes, as I have previously stated, through communicating with Ellis, Grell & Company to still continue to exercise their best efforts and offices to obtain from the Castro administration the right for us to go on.

Q. What year was that? A. That was 1901.

Q. You wrote to Ellis Grell to do what for you? A. He was doing business with the Castro government and he was here in New York. Ellis Grell had come to New York about that time and we discussed the matter very seriously; we were in the hopes that we might get in possession through the Castro government and resume operations,

Q. Anything further than that? A. No.

Q. Your company never paid the Orinoco Company, Ltd. any royalties? A. Yes.

Q. When and to what extent? A. To the extent of over $20,000.

Q. When? A. By acceptance of the Board of Directors of the Orinoco Company, Limited, and the Orinoco Iron Company accepting the amount that the Iron Company had advanced for litigation as advance payments on ore to be shipped.

Q. Aside from that, you never made any payments of royalty? A. No, sir.

* * * * * * *

Q. On page 14 of the bill in this case you have in the Fifth paragraph stated the amount of moneys which you claim you have expended in and about the performance of the contract with the Orinoco Company, Limited; the first item is a charge of $26,500 for examination of engineers at Santa Catalina, Perla, and survey and chartering the Boca Grande. Now what amounts did you pay to engineers at these places, and surveying and chartering of the Boca Grande, you have stated it at $6,000. I want to know what examination of engineers at Santa Catalina, what engineers and the amount paid them, and what the work was that they did? A. Engineers, that part of the expense was probably four or five thousand dollars.

Q. What did the engineers do; who were they? A. J. Trowbridge Bailey, Schuman, part of the medical staff, the doctor, the laborers, the men that we took aboard from Barbadoes.

Q. I mean the engineers? A. About four or five thousand for the engineers.

Q. Who were they? A. Trowbridge Bailey, Schuman and one other man whom Mr. York engaged.

Q. Did you pay him? A. We paid Mr. York for the same.

Q. Do you know how much you paid York and how much you paid these other engineers? A. York had quite a modest expense account, I think four or five hundred.

Q. At Santa Catalina the only thing examined by your engineers was the iron deposit that was there, or supposed to be there; what did your engineers do at Santa Catalina? A. We took a crew of about ten men and visited the property and proceeded to do some trenching and preliminary exploration.

Q. How many days were you engaged in it? A. I think inside of four or five days we completed the work at Santa Catalina.

Q. What did you do there? A. We were taken to this alleged mountain of iron and not finding it there, we gave it up, and went on.

Q. That is a few miles from Santa Catalina? A. Yes.

Q. Then in addition to your engineers going there and seeing there wasn't any ore there? A. Then we proceeded to the next place to find where there was ore.

Q. You say you were three or four days searching for ore?

138 A. The property was supposed to be in shape for inspection, and we didn't find it there; then we did some exploration in

that vicinity and found no evidence of iron of that character, with an absolutely adverse report.

Q. What was the expense of that examination at Santa Catalina; did you say $5,000 was the expense of going to Santa Catalina? A. At Santa Catalina, I cannot segregate the actual amount—I can tell you what a summary of the trip made.

Q. You gave Mr. Harr here these figures to put in here; you got them somewhere? A. Yes, I didn't pay a man for the five days' work at Santa Catalina, but for the completed work, including the whole trip from the United States and back again.

Q. Then this $26,500 is the expenses of the "Penelope" from start to finish? A. The engineers and supplies, and including the entire expenses.

Q. For the Penelope? A. Not the supplies for the Penelope. The supplies and the men we got at Santa Catalina.

Q. Were they brought with you on the Penelope? A. We took them aboard at Port au Spain; we didn't know what the labor conditions were so we took the negroes from there.

Q. Can you itemize that charge of $26,500 at all? A. Yes, I will itemize for engineers approximately four or five thousand dollars; I will approximate about $2,500 for the labor; about two or three thousand, approximately, for our tools, equipment, surveying instruments, assay outfits; $10,000 for the three months' use of the boat in making trips up and down the Orinoco to Imataca and Manoa and the return to the United States. Then I should say three or four thousand dollars additional was the expense from the Boca Grande up to Laguira and Caracas, and I should say we used—must have spent about $4,000 in coal consumption—lighterage—that makes up that.

Q. When did the Penelope leave New York? A. In February, middle of February, 1898.

Q. You chartered the boat? A. Yes.

Q. And paid $10,000? A. Yes.

Q. Who comprised the party that went on board of the boat and took the trip to South America and back? A. There was Mr. John Sheppard, Mrs. John Sheppard, J. Trowbridge Bailey, Dr. Kellogg, Mr. Burnan, my father, my wife and myself.

Q. And the object of the chartering of the vessel was to do what? A. Was to make a complete examination of the property with all the surrounding conditions for shipment, leaving the company at Port au Spain until we got through with the work up the Orinoco River.

Q. Who did you leave at the Port au Spain? A. The ladies.

Q. And this includes the charter price and the coal and provisions? A. Not the provisions, all the provisions for the people on board the boat, including the crew, were paid for personally, some $8,000 or $9,000 was contributed.

Q. You chartered the Boca Grande? A. We took our soundings so as to enable us to find a passage as near as we could to ascertain whether boats of 14 feet draft could cross the bar.

Q. In the second item, you have got the charge of engineers accompanying the survey made by the Dolphin to determine water

measurements and piers and harbors, $10,000? A. That was mainly for re-chartering the Boca Grande; that was to fix the survey with stationary buoys and establish the base line.

Q. What engineers went on this trip? A. The government did the work there, but we sent our representative, Mr. M. L. Roeder to provide all of the additional lighterage, the launches, the taking care of the government crew on shore.

Q. For that you make a charge of $10,000? A. That was our part of the expense.

Q. Have you any vouchers that show this payment of $10,000? A. Yes.

139 Q. I would like to see them. The third item is a payment for demurrage and freight for illegal retention of U. S. S. Mercedes, &c., held by the revolution? A. That is the "Tresco."

Q. And that vessel was chartered by you in New York and sent down to Imataca to bring back a cargo of ore? A. Yes, it was loaded to the extent of 1,500 or 1,700 tons.

Q. And you say it took so many days to load? A. Yes.

Q. How many days was the vessel delayed there? A. I don't know, but the charge and demurrage amounted to exactly $4,550.50; that was on that boat alone, that was the freight and demurrage.

Q. How much per day? A. As I remember it, it was at the rate of $250 a day.

Q. What was the freight charge or total charge? A. As I say, I know by the steamship company that there was a charge of demurrage $4,550.50; I think $5,000 would include the demurrage and the boat. It was about $4,500 for the charter of the boat, and the demurrage.

Q. What was the rest of the $12,000 made up from? A. Taking the time of the men there——

By Mr. Harr: What about the freight?

Witness: That is the freight.

(Answer continued). There was about $6,000 or $7,000 additional expense in getting that boat out.

Q. How "$6,000 to get the boat out"? A. They held that boat there three weeks, I think the charges were freight, demurrage, additional expense and labor charges in connection with that last shipment.

Q. Don't you know? A. I don't know from memory; I can with time look through the accounts and see how every dollar was expended. I know that the steamship company charges were close to $5,000 because the cargo had to stand that charge at the Steel plant. The balance was required down there at the property end, towards which $4,000 was provided through Brown Bros. as shown in the vouchers.

By Mr. Harr: This statement is just a summary?

Witness: This is a summary (referring to papers). The certified accountants made this up from all of their vouchers.

Q. The demurrage and freight did not amount to $12,000? A. Not exclusively.

Q. The demurrage and freight amounted to $4,550, didn't it? A. Yes, at least that. I am giving you this summary from memory; I am not going to be bound down here to an item of that kind. I say the total cost amounts to $12,000.

By Mr. Harr: You didn't make that statement yourself? A. No, the certified accountant. To the best of my knowledge this is the correct amount that the treasurer reported as having been paid out on account of this steamer "Tresco."

Q. You have sworn that this item of $12,000 is all right, and I am cross-examining you now as to the freight and demurrage? A. I remember one item of $4,550.

Q. When you testified you paid for demurrage and freight $12,000, you didn't? A. I will not say that.

Q. Then the additional amount must have been paid? A. I believe the vouchers shown by the treasurer to be that correct amount, because the books have to balance.

Q. I want you to state the items of money paid by you on account of demurrage and freight embraced in this statement, and also any other items that go to make up the $12,000. I want to know what the other items were; where does this $8,000 go? A. I have stated that the total cost as certified to by the treasurer shows there; I am not the treasurer and therefore cannot state how the other items are made up.

Q. Why did you swear it is correct? A. To the best of my knowledge and belief all the items are correct; it is made up by vouchers and paid out by the board of directors of the company.

140 Q. I want to know what those additional charges are? A. The books must show. (Witness refers to books.) I have sworn to the best of my knowledge and belief, I did not make up the accounts of the treasurer of the corporation. I have seen the items making the gross amount of $12,000.

Q. I want you to tell me the different items that are embraced in that account of $12,000? A. I will as well as I can. I remember one item of $4,550 that I recall quite distinctly: that was the amount of the freight,—or balance of freight and demurrage on this steamer. I cannot recollect the other items from memory, but the treasurer's report will show that.

Q. Perhaps you can get it from the ledger? A. The treasurer should do that work; I don't keep accounts.

Q. As the *the* third and fifth items of expense set forth in paragraph 22 of the bill of complaint in this case. I ask the witness to testify as to the amounts paid for demurrage and the amounts paid for freight, and any other amounts that are included in that item, and as to the next item following it, I want him to state in detail the expenses incurred in the management of the business and the development of the mines and machinery, &c., as stated in that item, and as to the other items I will not bother him with. A. I am going to state that I am the President of this company. I can state from all the vouchers which I have before me. They can be verified, all

ose disbursements can be verified, but that is the treasurer's business
d it would take me a long time to go over it.
Q. These items in here were furnished Mr. Harr to put in this
mplaint? A. I did not, the certified accountant and James E.
ork the treasurer, prepared this statement.
Q. Then you had nothing to do with the examination of the books
the company and the preparation of these charges in paragraph 22
the bill of complaint? A. I had a great deal to do with them;
ey were brought to me and when they prepared this account they
ecked them over and the total was as the treasurer had reported to
. The actual physical work of it I did not do.
Q. Then you have no recollection of the amounts paid to engineers
knowledge of the amounts paid to engineers as stated in the first
m, or of the expenses stated in any of these items, except what you
rived from the books of the company? A. Yes, I do, as president
the company they gave me the details and *and* the books and how
ey were prepared; they had to report to me.
Q. Then aside from the books of the company and what somebody
d you, you do not know anything about the accuracy of these
ures? A. Yes, at the time I went through every voucher to see
at these were correct; as president of the company I wanted to
ow that the accounts and balance sheets were correct; the treasurer
d to certify as to the correctness of them.
Q. But further than what you have stated with reference to these
eral five items in paragraph 22 of the complaint, you cannot tes-
y as to any detailed expenses with regard to any of these expendi-
es mentioned in here? A. Yes, I can.
Q. Well, how much was paid for demurrage? A. Approximately,
50 a day.
Q. How many days? A. The bill would show that, I cannot state
om memory.
Q. I am asking you what you can testify to from your memory;
n you tell us how much was paid for demurrage. A. $250 a day.
Q. I am asking you how many days and you don't know? A. No,
ither could you answer it; I remember the total bill was approxi-
ately $4,500 to $5,000.
Q. You said $4,550.50? A. All right—What I now recall was a
l of what we got from the Maryland Steel Company of what the
mpany charged.
Q. But as for the rest of the items you have no knowledge? A.
ot from memory, but from the books and vouchers of the company.
Q. What was this other $7,000 or $8,000 paid out for? A. If you
ve me time I will look through the books and find out.
Q. I will give you time; will you do it so that you can testify to-
orrow?

By Mr. Duvall: I think the simplest way would be for you to let
r. Roeder simply answer to the best of his ability.

Q. From your own knowledge you do not know very much about the actual expense of each of these items that are mentioned in this paragraph 22? A. No, nothing further than the totals.

Q. And you cannot tell me how much expenses were incurred in the management of the business and how much in the development of the mines at Imataca, at Manoa, and how much for machinery or how much for supplies or how much for labor? A. Yes, I decidedly can, I can give items right off our books.

Q. Then tell me how much expense was incurred in the management of the business of the company?

Mr. Roeder opens the books containing the vouchers of the Iron Company for the purpose of ascertaining this information, but counsel advises him that it is not incumbent upon him to show all these vouchers at this time, but to testify simply as to what he knows of his own knowledge and recollection.

Q. You cannot tell without examining the books what was expended for engineers at Santa Catalina, surveying and charting the Boca Grande; you cannot tell without consulting the books any of the amounts of these separate expenses that are mentioned in here (referring to the Bill of Complaint)? A. I can give the total of those separate expenses.

Q. Can you give anything but the totals as they are stated in the bill? A. Not without exam-ing books and vouchers.

Q. Will you examine the books and vouchers and give me these details that I am asking for?

By Mr. Harr: The book containing the vouchers and papers is the best evidence of what those expenses were, and we will offer the book in evidence at the trial. The book will be marked for identification.

Marked for identification Roeder Exhibit 11, October 6, 1921.

By Mr. Baxter: Unless the witness will now examine the book and qualify himself so as to submit to my cross-examination, I will move to strike out all his testimony which he has given in support of the matters alleged in folio 1, Paragraph 22 of the Bill of Complaint.

The Orinoco Company, Limited, paid the money for the Imataca Mine at the judicial sale at Bolivia, which it since received back.

We knew of the Venezuelan and United States Mixed Commission sent to Caracas in 1893-4, organized under a protocol between the two governments to arbitrate the claims of American citizens against Venezuela.

Our counsel told us that we were part of the claim, that we had no direct claim against the Venezuelan government, as we had no contract with it.

The reason why we did not present a claim was that we were advised by counsel that it was not necessary, and that we were part of the award.

The nearest custom-house was at Ciudad Bolivar, and in order to clear a boat somebody had to come down there from the custom-house.

We could ship ore in vessels of 3,000 tons tonnage with draft of 14 feet. The "Tresco" carried 3,000 tons. We could have loaded her

up to 3,000; the balance of the cargo was there, but they would not wait to load the balance of the cargo because they wanted to get her out. If they had not been molested the cargo would have come up to 3,000 tons.

We had to pay a charter for 3,000 tons. She had to go down in ballast, so they had to have a guaranteed cargo at $2.00 or $2.50 per ton.

Q. And your demurrage was $250 per day? A. That would account for it; freight and demurrage $12,000.

Q. I want you to answer my question. Lawson indicated in his testimony that the boat would carry 3,000 tons, but he put in 1,500 tons on account of the bar,—because she would not go over the bar with full load. A. The boat was not loaded up to 3,000 tons because she was seized and held up.

142 Q. Do you mean that these men (an officer and five or six men from Cuidad Bolivar) prevented Lawson from doing it? A. Yes. It prevented Mr. Lawson's successors. I believe Mr. Verge was then superintendent of loading and shipping. Mr. Lawson had been retired and I believe he was then in Port au Spain.

The bar was no obstruction to our shipping ore. There was 13 feet draft safely.

In January, February and March 1900 our payroll was over $34,000.

Our expenses at Manoa (Imataca) were running $3,000 a month on actual payroll, and the actual expenses, including supplies, would be about $5,000 per month.

The payroll to the miners averaged about $3,000 per month during our operations. We hired our miners by the day and boarded them.

We were operating over a year. Our operating expenses were as much as $60,000.

GEORGE N. BAXTER, a witness for the defendants, Orinoco Company, Limited, and John W. Le Crone, its Receiver, testified (by deposition) as follows:

Direct examination:

I have been a member of the Board of Directors of the Orinoco Company, Limited, from its organization in 1897 and its Secretary ever since, excepting from some time in 1898 until sometime in 1904 or 1905, when H. T. Kyle was its Secretary.

I drew, in collaboration with J. L. Washburn, plaintiff's attorney, the contract of July 22, 1897; and in collaboration with Benoni Lockwood, Jr., plaintiff's attorney, the contract of —— —, 1899 mentioned in plaintiff's Bill.

They were then informed of the fact that George Turnbull then claimed title to the Imitaca mine mentioned in said Bill, under a Concession of date Jan. 1, 1896 and an Executive Resolution, which pretended to grant and confirm title thereto in him.

I had conversations with Mr. A. B. Roder, the President of the plaintiff and with James E. York after March 8th, 1901 with regard

to the Notice which had been served on or about that date to the effect that the Orinoco Company, Limited terminated said contract.

In the conversation with Mr. Roeder he said that he thought the Orinoco Company, Limited, ought to withdraw such notice. I told him I had no doubt that it would do so if his company would give any reasonable assurance that it would go on and perform the contract. He made no reply to this. He said if the company did not withdraw the notice that he would make trouble for it.

Afterwards I told Mr. York of my said conversation with Mr. Roeder, and he said that he did not want the company to
143 reinstate the contracts; that he would have nothing further to do with Mr. Roder, of whom he spoke very disparagingly.

He asked me if he would organize a new company if my company would enter into a contract with it on the same terms as the old contract with plaintiff.

The Notice mentioned by me is that dated November 27, 1900, and attached to plaintiff's depositions on file and was served by mail by me in March, 1901 a few days before the 8th of that month, to the best of my recollection. I drew that notice.

I had a conversation with James E. York with regard to the filing of a claim or memorial with our government against Venezuela for damages, under the Protocol of February, 1903, which provided for the arbitration of claims by American citizens against that nation, about September 1, 1903, in which he informed me that A. B. Roeder had asked him to call a meeting of the Board of Directors of plaintiff for the purpose of authorizing the employment of an attorney to prepare such claim or memorial; and that he had refused to do so.

I learned from conversations with Messrs. Roeder, York and Lockwood that York owned or controlled a majority of the capital stocks of the plaintiff and the action of its Board of Directors.

T. B. Clement was one of the directors of the Orinoco Company, Limited, and its treasurer from its organization.

The letters which are shown me now purporting to be signed by A. B. Roeder, John Sheppard, and Benoni Lockwood were signed by them. (Marked for identification.)

The defendants adduced in evidence the following letters: to wit:

(Letter-heading of Orinoco Iron Co.)

New York, August 1st, 1899.

Orinoco Company, Limited,
Faribault, Minn.

GENTLEMEN:

We wish to urge upon you the immediate necessity of instructing Robert G. Henderson, the Government depositary in the matter of the sale of the Imataca mine on November 18th, 1898, to pay over to the Government the purchase price. It was understood that this was not to be done until we were put in peaceable possession of the property by the Government. This has now been done, and it is in

our opinion a most serious detriment to the interests of our Companies to place any obstacle in the way of the price being paid.

We should at the same time suggest that you write to President Andrade and state that the money is subject to the Government's order upon the giving Henderson as a receipt for you of the certified copy of the decree of sale, which includes the mine itself. This will clearly define the Government's position and will estop them in the future.

Yours very truly,

A. B. ROEDER,
President.

144 Also a letter signed "A. B. Roeder, President," of the Orinoco Iron Company, dated March 15, 1900, and addressed to "Orinoco Company, Limited, Faribault, Minn.," a copy of which is set forth in "Plaintiff's Exhibit Roeder No. 2."

Also the following letter:

(Letter-heading of Orinoco Iron Co.)

New York, March 16th, 1900.

T. B. Clement, Esq.,
Treas. Orinoco Co., Ltd.,
Faribault, Minn.

DEAR SIR: -

I have been very hard at work since the receipt of your letter, and am at present endeavoring to complete the arrangement with Mr. York, which I discussed with you when last here. It will be better for both of us to place matters in such shape so that the full and free exercise of any plan may be carried out.

I have received a notice from your Secretary, Mr. Kyle, to which I have replied, and I beg to enclose the letter to you. I do not know exactly what was intended by the notice, and if I have mistaken its tenor I shall be very glad to hear from you.

I have been, and am, continuing to meet expenses which should not fall upon us, and it makes it doubly hard in view of the fact, as you know, that the burden is falling largely upon me. I personally paid the drafts from the attorneys at Caracas, which when you arrived here that date amounted to $1,440, all in the prosecution and defense of the case of Turnbull versus Orinoco Company, Limited. I feel that it is right that you gentlemen should take steps from now on to protect matters, so that your undivided attention can be given to the mining. If we are able to do this and can send down laborers and boats, it should prove of incalculable benefit to your vast concession. However trivial the suits may appear to some of the gentlemen in your Company, the fact remains just as stated by Messrs. Olney and Mallet Prevost and the other gentlemen at the Waldorf meeting, that until the titles are forever quieted capital cannot be enlisted.

Very truly yours, A. B. ROEDER.

November 12th, 1900.

Orinoco Company, Limited,
Faribault, Minn.

GENTLEMEN:

I have been awaiting some action by your Company looking toward its rehabilitation and the preservation of its title in South America since the recent action of the Government there, but am unaware that anything has been done by you in this direction. As you know, Mr. Ivison, Mr. Belmont, myself and others invested quite a large sum of money in pushing the Orinoco Iron Company, all of which business is based, of course, upon the validity of your rights to the iron range in Venezuela. From the very beginning troubles arose upon that score, and all the difficulties encountered and failure to mine profitably can be traced, I believe, directly to your defective title or difficulties concerning the same. Finally, you seem about to allow the whole property to be swept away, and with it the opportunity that I may have of getting my money back. I believe an examination will prove that Mr. Ivison, Mr. Belmont and myself have invested as much money in this enterprise as any other individual, either in the parent Company, or in its subsidiary Companies, and before endeavoring to obtain some satisfaction from the Company by other means, I am writing this letter to ask you to at once communicate to me definitely what steps you are taking for the preservation of your rights and my own. I intend nothing personal to any of your officers or directors when I say that never in my life have I encountered such a lack of energy and business sagacity as has been shown by your Company since I have been interested in it. I have seen opportunity after opportunity thrown away, and much precious time lost through an everlasting procrastination that seems to have taken hold of your concern. Can you not at least transfer to New York or Boston whatever rights you have. I will be glad to lend my assistance and experience in aiding any immediate and sensible move that you will make. Apparently the passing of weeks and months seems to mean nothing to you.

145 I simply can not understand your negligence, and I think I have the right to insist that you gentlemen at once take the matter in hand in order that something may be saved from the wreck.

What do you propose to do about it?

Yours very truly,

JOHN SHEPPARD.

Cross-examination:

I am at present Secretary of the Orinoco Company, Limited, and one of its directors.

I was attorney and counsellor for the Limited Company from its organization up until it went out of business in 1901, and I am not sure whether I ever formally resigned as counsellor or as its attorney or not.

The Orinoco Company, Limited, went out of business by transferring all of its interest and rights under the Fitzgerald Concession, excepting about 500 acres of land embracing the townsite of Catalina to the Orinoco Corporation either in 1900 or 1901. There were two conveyances. It seems to me that one of them that was a part of the concession was in 1900 and the other in 1901. I don't remember the exact dates.

During the period of the attempt to operate its Fitzgerald Concession, the assets of the company consisted of the concession itself, and it had built a large administration and hotel building on the concession at Santa Catalina in 1898 or 1899, and had laid out the townsite of Catalina and had a steam sawmill and some mules and logging apparatus, and some two or three little steamboats. That is all I can remember.

The administration and hotel building and saw mill were built by the Orinoco Company, Limited, and the boats purchased by the Orinoco Company, Limited.

Between $150,000 and $160,000 was paid into the treasury of the company in actual cash.

It had an office and place of business at Faribault, Minnesota. It had its office in the Masonic Temple, which was my office, and in which the board meetings were held, and all of its business transacted and its records kept.

It transacted nothing that would be called business in this country, I think, except the holding of its board meetings and the negotiation of contracts for the exploitation of its resources and the purchase of materials for constructing its hotel, etc.

46 The purpose of the administration building on its concession in Venezuela was to provide temporary hotel accommodations for colonists. We intended to colonize the concession as far as we could, and the hotel and administration building was intended, when colonists went there, for them to have shelter until they could establish themselves on their lands.

As to how far we got with this colonization, I think that we issued documents to colonists evidencing that they would have the right to a deed after they had occupied and improved it to not exceeding a dozen persons. However, during the time that the Orinoco Company, Limited, was in possession there colonists came upon the concession and established themselves along the banks of the river without any consent or documents from us, to the extent I think of about 100 persons.

The Orinoco Company, Limited, acquired title from the Manoa Company by deed of date October 17, 1895.

It held the title until it conveyed its interest, as I have stated, to the Orinoco Corporation in 1900. Partially in 1900 and partially in 1901.

It employed a general manager, Captain B. Boynton, who, with his wife, went on the concession and occupied the administration building I think in 1897, as soon as we had completed the administration building, or soon after.

(Witness here shown copy, certified by Secretary of State, of memorial of the Orinoco Corporation, complainant, against the Republic of Venezuela, signed The Orinoco Corporation by George N. Baxter, Attorney in Fact, and dated March 2, 1906, and another paper, of same date, addressed to Honorable Elihu Root, Secretary of State, signed George N. Baxter both papers being certified to be true copies by the State Department.) I remember submitting the originals of said papers to the Department of State, said papers being marked "For Identification Baxter No. 1." (Said paper was introduced in evidence at trial.)

I also submitted some written arguments on behalf of the Orinoco Corporation in connection with this memorial.

Said memorial and the arguments referred to in support of it were prepared by myself, with some slight assistance from Rudolph Dolge, who was one of the officers of the Orinoco Corporation, and after we had prepared the memorial and argument, at his instance we went up to see Mr. Ralston, at his house, and the memorial and argument were read by Mr. Ralston, or by us to him, and signed by Ralston and Siddons, as I recall it. There was one point in the argument that Mr. Ralston contributed. I have forgotten what the point
147 was. We asked him to contribute the argument on that one point. It was to the effect that the decision of the umpire was *obiter dicta* and not *res adjudicata*, the umpire who decided the claims of the Orinoco Company, Limited, and the Manoa Company and Turnbull.

I remember seeing copy of document entitled "The United States of America. Department of State. Argument. The Orinoco Corporation, complainant, against the Republic of Venezuela," dated March 5, 1906, certified to by the Secretary of State and signed by George N. Baxter and Ralston and Siddons, and I remember signing and submitting the original of such document. (Copy marked "For Indentification Baxter No. 2 and introduced in evidence at trial.")

I also remember signing and submitting the original of a document entitled Supplementary Argument, dated March 12, 1906, signed George N. Baxter and Jackson H. Ralston, copy of which, certified to by the Secretary of State, has been shown me. (Copy marked "For Identification Baxter No. 3 same being introduced in evidence at trial.)

I remember signing and submitting to the Secretary of State letter of March 20, 1906, and also draft of instructions which we asked the Secretary of State to give to William W. Russell, who was then our Minister Plenipotentiary at Caracas, certified copies of which had been shown me. (Papers marked "For Identification Baxter No. 4 same being introduced in evidence at trial.")

I also remember signing and submitting the originals of the following papers (not shown me) to the Secretary of State on or about the dated mentioned therein, namely, Protest of the Manoa Company, Limited, and the Orinoco Company, Limited, claimants, against the Republic of Venezuela, dated March 5, 1906; and other papers, marked "For Identification Baxter No. 5." (Copies of said

papers, certified to by the Secretary of State, were introduced in evidence at trial.)

The firm of Ralston & Siddons cooperated with me in acting as counsel before the State Department in the prosecution of the memorial and the claims of the Orinoco Corporation, and the subsequent papers which I have identified. They were employed by Mr. Dolge, who was one of the officers of the Orinoco Corporation, to assist generally, in connection with myself, in furthering the memorials of the Orinoco Corporation which have been adduced here. Whether they were employed by Mr. Dolge in any other respect or further, I don't know.

148 I had nothing to do with the preparation of the letter dated June 21, 1906, addressed to the Secretary of State, signed by Ralston and Siddons, of which a copy certified to by the Secretary of State has been shown me.

I might perhaps say that when I was in Minnesota about that time I remember that Mr. Dolge wrote me that the Secretary of State was disposed, if we could fix a reasonable amount of damages which we claimed had been sustained by the companies by the grievances complained of in our memorials, that he would insist upon Venezuela paying it, and that Mr. Dolge asked me to consent to fixing the damages at five millions of dollars, and that I consented to that proposition of Mr. Dolge's, although I thought we ought to have named a much smaller sum. At that time, June 21, 1906, I was in St. Paul or Minneapolis, but was frequently here on the business of prosecuting these memorials here.

I was a director of the Orinoco Corporation during all the period from 1906 to September, 1909. It had no assets whatever that I know of besides its interest in this concession. It was organized merely for the purpose of taking over the concession.

I was not connected with the original grantor, Cyrenius C. Fitzgerald. He assigned the concession to the Manoa Company, which was organized simply for the purpose of exploiting the concession.

The Manoa Company, on October 17, 1895, transferred it to the Orinoco Company. I think I made a mistake in my testimony in saying that the Orinoco Company, Limited, acquired title October 17, 1895. The Manoa Company, October 17, 1895, transferred to the Orinoco Company, and the Orinoco Company transferred to the Orinoco Company, Limited, early in 1896.

I had nothing to do with the transfer of the concession of the Manoa Company to the Orinoco Company.

The Orinoco Company was organized simply for the purpose of taking over the concession, and shortly afterwards transferred the concession to the Orinoco Company, Limited.

I was connected with the organization of the Orinoco Company, Limited. I drew the application for its charter and I obtained the signatures to the application of three residents of Wisconsin, in order to comply with the law.

I was a stockholder of the Orinoco Company, Limited. The other stockholders were Donald Grant, D. W. Grant, a man named Cameron, T. B. Clement, myself, Israel M. Ross. It seems to me some

other man, whose name I cannot recall now, were the persons
149 who were back of the organization of the Orinoco Company, Limited, at the time, and who became the holders of all its stock, or substantially all of it.

The capital stock of the Company was thirty millions, and a large part of that, I cannot state how much, was in the treasury, and the residue of it was issued or subscribed for by the persons whom I have named. About five millions was in the treasury.

I think we gave the Orinoco Company 40% of our stock, and afterwards, oh, several millions was allotted to influential persons in Venezuela.

I had originally about two millions.

None of us paid anything in cash to the Orinoco Company. We paid them, I think, 40% of the stock and left, I think, five millions in the treasury. Several millions were reserved to be used down in Venezuela, and there was no cash paid by anybody for any of the stock of the Orinoco Company, Limited.

At the time of the organization of the Orinoco Company, Limited, it had no other assets besides this concession.

The money with which the administration building down in Venezuela was built was borrowed by the Orinoco Company, Limited, from Mr. Grant, Clement, and the persons I have named as the men back of the proposition.

My actual cash investment at that time was something like $5,000.

Q. Did you have anything to do with the organization of the Orinoco Corporation? A. No, not with the organization of it. Mr. Clement and Mr. Grant went to New York and made some arrangements with some corporation there, I think it was the Exploration Syndicate, and the officers of the Exploration Syndicate and Mr. Clement and Mr. Grant chartered and organized the Orinoco Corporation for the purpose of transferring to it some of the assets which would enable the Exploration Syndicate to sell its stock free of all debts of the Orinoco Company, Limited. It was intended to get some stock that was not subject to the debts of the Orinoco Company, Limited, that they might raise money on.

Q. That was in 1901, was it not? A. I think it was organized in 1900.

Q. The gentlemen whom you have mentioned, Clement and Grant, were the same Clement and Grant who were among the organizers of the Orinoco Company, Limited? A. Yes, sir.

Q. Did they become stockholders and directors of the Orinoco Corporation? A. The original directors of the Orinoco Corporation were New York men, but afterwards, in 1901, they resigned and directors were elected, all or nearly all of whom, as I recollect, were Faribault men. I was one of them. Clement was one, Donald Grant was one, and I think D. W., but I am not sure.

Q. Practically all of the original stockholders of the Orinoco Company, Limited, became stockholders then, and later directors, of the Orinoco Corporation? A. No. As I recollect it, the transfer of these assets of the Orinoco Company, Limited, to the Orinoco Corporation was paid for by an issue to the Orinoco Company, Limited, of all its

capital stock, and none of the stockholders of the Orinoco Company, Limited, became then stockholders of the Orinoco Corporation.

Q. That is because there was not any stock left? A. Well, all the stock was issued to the Orinoco Company, Limited, in paper.

150 Q. You say they gave it to the Orinoco Company, Limited? A. Yes.

Q. What did the Orinoco Company, Limited, do with it? A. The Orinoco Company, Limited, gave all of its stock, excepting a small part of it, to a syndicate in Worcester, Massachusetts, called the Dully Syndicate, Charles B. Duffy and his associates.

Q. For what purpose? A. That is what I was trying to think. Duffy and his associates, in consideration of that stock, agreed to pay nine thousand dollars which the Orinoco Company, Limited, owed in Venezuela for supplies, and to quiet the title to the concession.

Q. You say Duffy sold to a man named Duffy or a corporation? A. No. Charles B. Duffy and some associates in Worcester.

Q. What did they do with the stock? A. They sold nearly all of their stock to Rudolph Dolge in 1905.

Q. Who was Rudolph Dolge? A. Well, he was a resident—he was a New York man, but was a resident of Caracas and who purchased this stock of the Duffy Syndicate and obtained control of the Orinoco Corporation.

Q. And he was made president of the corporation, was he? A. No: I think he was a director and treasurer, and I think a man named Fiske, one of the Worcester men, was made president.

Q. Did Dolge divide up his stock with anybody and, if so, with whom—this stock of the Orinoco Corporation that he got from Duffy? A. Dolge transferred to me some of the stock. Well, now, my best recollection is three hundred thousand of the common stock and one hundred and eighty some thousand of the preferred stock.

Q. What did you give for that stock? A. I paid nothing for the stock in cash but agreed with Mr. Dolge to assist him in quieting the title to the concession.

I do not think that the Orinoco Corporation had any other business in this country, or in any place, except to hold this concession and prosecute its claims in regard to it.

Bankruptcy proceedings were instituted against the Orinoco Corporation in the District Court for the Southern District of Ohio, Western Division, in November, 1910. At that time the protocol between the United States and Venezuela under which the $385,000 were to be paid had been signed.

Insolvency proceedings against the Orinoco Company, Limited, in the State of Minnesota, in the State Court there, were instituted in 1901. I instituted those proceedings.

Q. For what purpose? A. I had recovered a judgment against the Orinoco Company, Limited, in 1901, I think, and, upon execution being returned unsatisfied, I instituted supplementary proceedings and had a receiver of the——

Q. What was the nature of your claim? A. I had a judgment against them for my services,

Q. For what? A. For my services as attorney and my expenses in its service in the United States and Venezuela, and for money which I had loaned them.

Q. What the amount of your claim? A. I think I recovered a judgment for—well, I think it was about ninety thousand dollars.

Q. Was your claim contested or was the judgment confessed? A. No; there was no defense; no answer to the complaint.

Q. Were you at that time one of the officers of the Orinoco Company, Limited? A. Yes, I was secretary.

151 Q. And also its attorney? A. Yes.

Q. Did the question of entering any defense to your claim come up before the board of directors of the Orinoco Company, Limited? A. Not that I remember of.

Q. What office did you say you held in the corporation at that time? A. I was one of the directors and secretary.

Q. As one of the directors and secretary of the Orinoco Company, Limited, at that time, did you or not regard it as your duty to bring the matter of your suit to the attention of the board of directors? A. No. The service of the summons was made on the president of the corporation.

Q. It was made on the president of the corporation? A. Yes.

Q. Who was the president of the corporation? A. Arthur C. Rogers.

Q. Did you discuss your case with him or the propriety of taking a default judgment in your case with him? A. I think not. I am quite certain I did not.

Q. Were there any other intervening creditors in those insolvency proceedings against the Orinoco Company, Limited, to which you referred? A. No.

Q. How much was received by the receiver of the Orinoco Company, Limited, under this award from the State Department before the Safford suit was filed? A. Nothing.

Q. Or after that suit was filed? A. After it was filed he received about seventeen thousand dollars.

Q. Now, to whom was that money paid by the receiver for the Orinoco Company, Limited? A. I think about, oh, two or three thousand dollars was paid as fees to Clement, who had been receiver. Le Crone, who was receiver when this seventeen thousand dollars was paid, I think about two or three thousand dollars was allowed to be paid to Clement for his services as receiver. I think five hundred dollars was paid to Le Crone on account of his services. I think something between two and three thousand dollars is in Le Crone's hands now, and the balance, something in the neighborhood of twelve thousand dollars, was paid on my judgment.

Q. Were there any other assets received by those receivers in that case, either before or since, at any time? A. Yes. The arbitral tribunal that sat in Caracas under the protocol of February, 1903, gave Clement a judgment for twenty-six thousand and some odd dollars. That was paid in instalments in 1904, 1905, 1906, 1907, 1908 and 1909, along there, and was applied in part to the payment of some receiver's certificates which the receiver had issued to get

money to prosecute the claims of the company down in Venezuela, and the balance was paid to me.

Q. How much was paid to you? A. Something over twenty thousand dollars.

Q. How much is the balance of your judgment remaining unpaid—the principal? A. Oh, it is over seventy-five thousand dollars, I think.

Q. What did you say the total amount of your judgment was? A. Why, somewhere a little less than one hundred thousand dollars.

Q. How much did you say you got out of that Clement judgment? A. The arbitral——

Q. Yes. A. Well, it was over twenty thousand dollars.

Q. And you received about fifteen thousand dollars from the money that came from this Venezuelan award which was assigned to the Orinoco Company, Limited? A. No; somewhere, I think, about twelve thousand dollars.

Q. So you have gotten over thirty-two thousand dollars on your judgment? A. Yes.

Q. Leaving a balance of about something less than sixty thousand dollars, or about sixty thousand dollars? A. Oh, something less than one hundred thousand dollars. I can't——

Q. No, the balance? A. I know, but I say, you see, there is interest on it.

Q. That is encluded from interest? A. Yes.

152 Q. You are familiar with the fact that by arrangement between the receiver of the Orinoco Company, Limited, and the Orinoco Corporation, about seventy-five thousand dollars was to be paid to the Orinoco Company, Limited—to the receiver of the Orinoco Company, Limited, out of this Venezuelan award? A. Yes.

Q. Was not that arrangement made with a view of satisfying your judgment against the Orinoco Company, Limited? A. Why, I suppose that the receiver, in making that adjustment with the trustee, expected to receive the money and expected to apply it on my judgment.

I was familiar with the leasing of the right under the Fitzgerald concession to the plaintiff to mine and develop the iron deposit in the concession.

Q. The Orinoco Iron Company attempted to operate under its lease, did it not? A. It did.

Q. Now, were you familiar with the action of the Orinoco Company, Limited, in declaring or attempting to declare a forfeiture to the Orinoco Iron Company of its contract? A. Yes.

Q. What did you have to do with that? A. Why, I was a member of the board of directors and participated in the meeting of the directors which passed a resolution to terminate the contract for——

Q. And you voted for the resolution? A. Yes, and I drew the resolution and mailed it to the plaintiff.

Q. Is that the signature of Mr. H. T. Kyle? (Indicating.) A. Yes.

Q. The secretary of the Orinoco Company, Limited, at that time? A. Yes.

Mr. Harr (To the Examiner): Mark this paper which the witness has just identified "For Identification Baxter No. 7."

(The paper referred to was marked by the Examiner as requested.)

Q. The Orinoco Iron Company objected to this attempted cancellation of its lease, did it not? A. Why, as I have testified, Mr. Roeder, whom I saw after that notice had been served on the company, said he thought we ought to withdraw the notice. Mr. York said that he didn't want us to reinstate the contract.

* * * * * * *

Q. You have stated that at the conference with Mr. James E. York, on or about September 1, 1903, he had informed you that Mr. A. B. Roeder, the president of the Orinoco Iron Company, had asked him to call a meeting of the board of directors for the purpose of authorizing the employment of an attorney to prepare a claim or memorial to that Commission, that is to said the United States and Venezuelan Mixed Commission, and that he, Mr. York, had refused to do so. Did you regard it as the duty of the Orinoco Iron Company to present any claim to that Commission under its contract with the Orinoco Company, Limited? A. Well, I regarded it as the privilege of the Orinoco Iron Company to file a memorial for its injuries which it alleged had been committed against it by Venezuela.

Q. You were familiar with the lease made by the Orinoco Company, Limited, to the Orinoco Iron Company? A. Yes.

Q. In that lease had not the Limited Company, the Orinoco Company, Limited, agreed to put and keep the Orinoco Iron Company in peaceful possession of the lands leased? A. Well, those leases are set forth in your bill and they are correct leases. I don't think there was any such clause in them.

Q. You don't think there was any such clause in them? A. No.

Q. Did not the Orinoco Iron Company, after the second notice which it received from the Orinoco Company, Limited, of the termination of its contract, to wit, the notice of March, 1901, reply in writing that when the Orinoco Company, Limited, was able to put it in possession of the property leased to the Iron Company, and
153 did put it in possession, it would be ready to proceed—you are aware of that fact, are you not? A. No, I don't remember any such thing.

Q. You don't deny it, though? A. Let me see whether I do or not. Read that over again.

(The last two question- and answers were read by the Examiner.)

A. Well, I have no recollection of any such thing.

Q. Don't you recall, Mr. Baxter, that at the taking of the deposition of Mr. Roeder in New York the past summer—— A. (Interposing.) October last, a year ago. It was in October.

Q. (Continuing:) About a year ago, that a copy of a letter written

by Mr. Roeder in reply to that notice of March, 1901, was offered in evidence by him? A. I remember that you introduced a letter addressed to the Company, or some of its officers, by Mr. Roeder, which I think is attached to your depositions; but I don't now remember the contents of that letter.

Q. Where are the records of the Orinoco Company, Limited? A. I have them here.

Q. Will you look among your papers, Mr. Baxter, for any letters received by the Orinoco Company, Limited, and particularly this letter in regard to the attempted—this and any other letters in regard to the attempted termination of its contract in March, 1901, or subsequent thereto, and produce them? A. I have examined the correspondence between the Orinoco Company, Limited and the Orinoco Iron Company, and I do not find any letter to Mr. Roeder like that which we have been referring to and which is attached to your deposition.

Q. Attached to his deposition? A. Yes, attached to Roeder's deposition. I don't find any such original letter among the files of the Company.

Q. Will you produce what letters you have? A. Yes, I can, I have got to go away tomorrow.

* * * * * * *

Q. What time did the assignment of the lease of the Fitzgerald concession by the Orinoco Company, Limited, to the Orinoco Corporation occur? A. The Orinoco Company, Limited, assigned to the Orinoco Corporation a part of its resources, the asphalt and some other resources, timber or something, in 1900, soon after the incorporation, and the residue of the concession, excepting about five hundred acres of land and the Santa Catalina townsite, in January or February, 1901. The residue in January or February, 1901.

154 At the trial counsel for plaintiff introduced in evidence the foregoing depositions of David M. Lawson, Benoni Lockwood and Albert Bart Roeder and the cross-examination of George N. Baxter, and the exhibits referred to therein, and the other exhibits hereinafter set forth including original letter of March 19, 1900, from H. T. Kyle to A. B. Roeder, identified as Baxter No. 7, and quoted in Plaintiff's Exhibit Roeder No. 2, and thereupon plaintiff rested. Whereupon said George N. Baxter, appearing as attorney for the defendants the Orinoco Company, Limited, and John W. Le Crone, its Receiver, read in evidence, on behalf of both of said defendants, his direct examination and the letters referred to therein.

Thereupon counsel for plaintiff announced to the court that plaintiff conceded the right of defendants Ralston, Siddons & Richardson, to compensation for legal services in procuring the award of $385,000 and to an attorney's lien on the balance in the Treasury, involved in this suit, to the extent only of its fair proportion of the total fee of $25,000, found by the Auditor in the Safford and McAdoo suit as due for services in procuring said total award; that the said fee so found by the Auditor was fair and reasonable, and that plaintiff consented

to any recovery by it being charged with payment of its fair proportion of said fee.

Counsel for defendants Orinoco Company, Limited, and its Receiver, announced that they did not concede the right of Ralston, Siddons & Richardson to payment of any part of their fee out of the balance of the award claimed in this suit by LeCrone.

At the conclusion of the evidence, counsel for the defendant John W. Lecrone, Receiver of the Orinoco Company, Limited, moved the court to dismiss the bill of complaint as to him for want of jurisdiction because it did not appear from the evidence that the suit was brought against the receiver with consent of the Minnesota court.

155 (PLAINTIFF'S LOCKWOOD EXHIBIT No. 2.)

At a meeting of the Board of Directors of the Orinoco Company, Limited, held pursuant to adjournment at the office of the Secretary, in the Opera House Block, Fairbault, Minnesota, August 5th, 1899, at 3 o'clock P. M., there were present Directors Clement, Rogers, Stockton and Kyle.

It was Resolved that in consideration of the money already expended and to be expended by the Orinoco Iron Company in defending the titles of the Orinoco Company Limited in Venezuela, the Orinoco Company Limited hereby stipulates and agrees to credit the Orinoco Iron Company with all such amounts expended in defending said titles, up to and not exceeding the sum of twenty thousand dollars. Such credit to be made in favor of the Orinoco Iron Company by crediting said Company upon its royalty account, as royalties may be or become due the Orinoco Company Limited under their contract of July 22d, 1897, and the amendments thereto. The Treasurer is hereby authorized to make said credits from time to time to the Orinoco Iron Company upon presentation of proper itemized accounts and vouchers, and the President is instructed to transmit a certified copy of this resolution to the Orinoco Iron Company, in order to assure said Company said credits.

It was Resolved that the President and counsel of the Company be authorized and instructed to at once notify the Venezuela Government and General Berrio that the purchase price of the Imataca Mine is in the hands of the Government depositary ready for withdrawal at the pleasure of the Government; also that the Orinoco Iron Company be authorized to cable this information to Vene-
156 & 157 zuela if necessary; also that the President and counsel of this company be authorized and instructed to notify Robert Henderson to same effect.

It was further Resolved that the Secretary be instructed to forward the transfer of the Imataca mine from Benoni Lockwood Jr. to the Orinoco Company, Limited to our Company's said agent at Caracas for filing in the proper registry office.

On motion the Board adjourned to meet again at the same place August 7th, 1899, at 3 o'clock, P. M.

(Signed) H. T. KYLE. [SEAL.]
Secretary.

158 (PLAINTIFF'S ROEDER EXHIBIT No. 1.)

Maryland Steel Company.

F. W. Wood, President.

Sparrow's Point, Md., May 17, 1916.

Messrs. Harr & Bates,
Westory Building,
Washington, D. C.

GENTLEMEN:

We give below the results of an analysis of an average sample of Orinoco ore taken from the cargo of the S. S. Tresco which arrived at our dock January 6, 1900.

Inasmuch as the average iron content, in the natural state, of ores from the Lake Superior district is now about 55.00%, you will be able to draw your own conclusions as to the relative value of the shipment in question.

Iron, natural.	Iron, dried.	Moisture.	Silica.	Manganese.	Phos.	Sulphur.
67.26	67.56	.45	3.15	Trace	.039	.029

Yours truly,

F. W. WOOD,
President.

159 (PLAINTIFF'S ROEDER EXHIBIT No. 2.)

Copy.

New York, June 19th, 1900.

The Orinoco Company, Limited,
Faribault, Minn.

GENTLEMEN:

It was our intention to take no immediate action of your "Notice of Termination of Contract" further than, as stated to you in New York, to as far as possible protect our investments and interests. We wish to avoid further complications and legal difficulties resulting from what we believe to be a wanton attack and debasement of our title by those from whom we had every reason to expect protection.

In view, however, of the adverse reports from Caracas, which have been published in all of the papers, we feel it is our duty to place before you the fact that if matters are allowed to progress too far in their present shape, a united and satisfactory adjustment between our Companies will become impossible.

In addition to specifically denying the allegations in your "Notice of Termination" we would again call your attention to our letter to you under date of March 15th, 1900, and we candidly put the proposition to you people—Is not every statement therein contained correct? And have they not been borne out by subsequent events? We repeat that letter to you herewith:

"New York, March 15th, 1900.

"The Orinoco Company, Limited,
Faribault, Minn.

"GENTLEMEN:

I am in receipt of your letter of March 12th, 1900, in which the resolution of your Board of Directors of March 6th, 1900 is recited.

You are certainly aware in view of the circumstances that such notice at this time is uncalled for and unnecessary. On our return from Europe in November, 1897 the condition of the properties and the impossibility of mining from the thousand million tons deposit was fully communicated. This resulted in the expedition to Venezuela in the Spring of 1898. The reports and recommendations were made by your Captain Boynton, Mr. York and myself by cable from Port-of-Spain, and subsequently from New York, and were to the effect that it was necessary to bring the Manoa property under our operations, as was agreed upon at the Faribault meeting previously held. It is needless to recall the useless delays in completing this matter, nor is it necessary to refer to the mistakes in the legal completion of the business. Sufficient be it to say that
160 it was not until May 6th, 1899, and then only after vast and burdensome expenditures, were we able to obtain the reversal of the situation and the right to go upon the property. Since then, instead of being able to conduct the business, we have been, and are, continually intimidated by litigation difficulties of which you are aware. It is too bad to have been obliged to divert nearly Thirty thousand Dollars from the mining to purposes not contemplated when we took over the business. There is every evidence that if we had declined or failed to make these advances there would have been a continuation of the unfavorable decision of the High Federal Court, 2d Instance.

With a knowledge of these facts and of the heavy disbursements which we have been compelled to advance, it is incomprehensible why we should receive such notice.

The legal opinion as expressed by the Messrs. Ex-Secretary Olney and Mallet-Prevost is quite correct as regards the title and the position that Capital takes, and I am certain that no other Company could have accomplished as much for you as we have done.

My telegrams advised you of the United States Government's instructions, which you gentlemen did not believe possible, but which you subsequently learned to be correct. It enabled you to act for mutual protection; but as I stated to you when last here, it required the carrying out of the plan I long ago outlined.

Just at the present writing I am in receipt of serious information

om Caracas, which by reason of the arrival and activity of hostile
terests is indicative that instead of your Board Meeting sending
otices to us, that the situation in Caracas required your protecting
e very foundation. Believe me, unless the settlement and plan
hich I fully outlined is carried out there will be no necessity of
ntering into the royalty question, concerning which I need only
y that you are fully aware that we have from the earliest date been
eterred from the prosecution of the business itself at the mines.

I mean no reflection of your gentlemen when I state posi-
vely that the fact confronts us that you have a vast concession with
ractically no authority or power to give to the lessors such commer-
al facilities as would enable them to prosecute the shipment of
e without serious loss. Since the very day of our right of entry
e have kept and maintained a large force of men constantly at
ork opening and developing the property and placing the ore in
ght. The moment that we were ready to commence shipments we
ere confronted by the fact that whatever of rights may have ex-
ted on paper, your Company's authority or privilege could not
ve us entrance or clearance of a single boat or the landing of a
ngle laborer without its being done through Bolivar, hundreds
miles up the river. We supplied the only authentic information
r the navigation of shipowners, and obtained through our Govern-
ent and the Venezuelan Government consent to the Dolphin's
rvey. The latter was a matter of considerable difficulty and ex-
nse, since our Company had to supply lighters and other facilities
the Government. We commenced the charter of boats and the
ipment of ores, but found the conditions as to entrance and clear-
ce as above stated, and it entailed an expense of nearly Three
ndred Dollars in cables for special government permits, and a
murrage of nearly ten days waiting for the arrival of the custom
ficials and half a dozen soldiers from Bolivar before it was possi-
e to clear the steamer "tresco." The earnest attempt to under-
ke the commercial movement of cargoes entailed on us a loss of
ry nearly Five thousand Dollars in transportation charges. Such
ndition of affairs certainly must be modified before the mining
d shipment of ore from the concession can be made without serious
s. With all of these facts all of you gentlemen are conversant,
d I am inexpressibly hurt that you should allow such notice to
sent us, instaed of frankly sending us your acknowledgment for
r services, for our advances and frankly have stated that without
scussion pending such periods the requirements for output shall
cessarily be suspended until the deterring causes shall have been
moved.

We frankly met your request for the three months' option by a
nsent, although it entailed upon us difficulties within our Com-
ny, and we certainly relied upon your promises and your appre-
ciation.

I feel that it is right and fair to us that you shall put us
in a proper position before your Board and so notify us, so
at we many include the Capital to carry on the work at the mines
d send boats with privilege of immediate entrance and clearance

without danger of demurrage or confiscation. That being done we will continue, as in the past, to more than meet the conditions of our contract, and faithfully put the product in the markets in the quickest possible periods."

Very truly yours,
(Signed) A. B. ROEDER,
President."

Notwithstanding your reply of March 19th, 1900, which is as follows:

"Faribault, Minn., March 19, 1900.

"Mr. A. B. Roeder,
52 Broadway, New York.

"DEAR SIR:

Mr. T. B. Clement, who is confined to his home by illness, asks me to acknowledge receipt for him of your favor of March 16th, enclosing letter to our Company, and to assure you that you are needlessly exercised about the matter of the notice. The contract of July 22d 1897, as you may remember, provided that our Company should designate the place of payment of royalties, and somebody discovered that this had not been done. The action of March 6th was simply to supply this oversight.

"Received your telegram announcing Mr. Grell's arrival in New York. We immediately wired Mr. Grant at Baltimore advising him of that fact, but were too late. He had already started home and is to arrive here to-night.

Yours truly,
(Signed) H. T. KYLE."

We were confronted by your change of position. It was stated in our letter that "Instead of your Board Meeting sending Notices to us that the situation in Caracas required your protecting the very foundation." There has been no time under the provisions of our contract that the difficulties, etc. have not made it inconsistent with prudent business principles to complete our work. You, yourselves, if you had been in our place, would not, or could not, have attempted the installation of a plant and the moving of a tonnage from a property acquired by public sale, which within six months was reversed by the Courts. While the decision of May 6th, 1899 gave us the decision of the High Court, 3rd Division, you are cognizant by our repeated letters that the enemy have been concentrating their efforts in Venezuela to not only obtain a reversal and confirmation in them, but of their attack on the very concession itself. That the menace was a tangible one interfering with our contract through no fault of ours is evidenced by the danger which now confronts us under the late decision. I had told you, and also written you under
162 date of March 16th that: "I personally paid the drafts from the attorneys at Caracas, which when you arrived here that date amounted to $1,440., all in the prosecution and defense of the case of Turnbull versus Orinoco Company, Limited." While we have

made advances in the matter of litigations, as we have stated and shown from our books, of about Thirty thousand Dollars, we do not wish at this time to further complicate the situation by discussing that feature of the business, but you will readily see how impossible it was to consider further advances or assist in the raising of capital to the end of protecting the joint interests of both companies until an amicable understanding was reached. Instead of having your aid and co-operation towards meeting the further necessary expenditures of attorneys engaged in defending your titles, it became known broadcast that not only were the large expenditures which we had advanced a matter of question, but that an absolute attack had been made upon our title by your gentlemen, thus damaging our own ability to raise and provide the capital with which to continue the prosecution and defence, but also damaging us in raising the capital and prosecuting the operations of our Company. It is, as I have repeatedly stated, too bad that burdened with difficulties of our own that united action was not taken at the critical time.

When you take into consideration the facts stated in our report upon our return from South America in the Spring of 1898, however unpleasant they may be, you cannot do otherwise than coincide with us that from the time of our first report to you under date of October 9th, 1897, that there has been one complication after the other up to the present time preventing the operation of the mines at Manoa. If this were a statement of one individual it might be questioned, but when it is the consensus of the opinion of the greatest and best lawyers and of capitalists, you must realize how seriously our Company has been affected and how injurious has been your late action.

This letter is written you with but the one object of bringing order out of chaos. It requires immediate governmental action; it
163 requires immediate joining of whatever strength is possessed by every individual in both companies, and if anything is to be saved by either Company we must head off every fight between the two companies, and join issues in a fight against our common enemy.

By this time it must become apparent to you that I am not an Alarmist, and that everything that I have stated as regards results has been borne out by subsequent developments. I say now that there must be immediate and joint action and not another day of complications between the parent Company and ourselves, and I urge that to that end you come at once to New York. There is certain information which I have and am receiving, which may result in a plan of mutual benefit. In the meantime communicate with your friends in Washington so that Minister Loomis be cabled a protest. In case you come East immediately I will meet you in Washington, in case you so desire. Some money should be sent immediately to Bolivar and Caracas to as far as possible hold the situation and not lose the right of appeal.

Awaiting your telegraphic reply, we are,

Very truly yours,

ORINOCO IRON COMPANY.
A. B. ROEDER, *President.*

164 (PLAINTIFF'S ROEDER EXHIBIT No. 3.)

Department of State,

Washington.

October 15, 1900.

A. B. Roeder, Esquire,
President Orinoco Iron Company,
New York City.

SIR:

I have to acknowledge receipt of your telegram of the 12th instant, in regard to the action of the Venezuelan Government in annulling the concession granted to the Orinoco Company, Limited. The question has been made the subject of instructions to the Charge d'Affaires ad interim of the Government at Caracas, and until he communicates fully with the Department showing the actual situation, it is in no position to do anything further at the present time. A copy of your telegram will, therefore, be forwarded to Mr. Russell for his information.

I am, Sir,
Your obedient servant,

JOHN HAY.

165 (PLAINTIFF'S ROEDER EXHIBIT No. 4.)

Telegram.

Postal Telegraph-Cable Company.

New York, October 12th, 1900.

Honorable John Hay,
Secretary of State,
Washington, D. C.:

Have just seen copy of Associated Press cablegram from Caracas, Venezuela which states that Orinoco Company Limited concession has been annulled by the Castro Government on ground of non-performance of contract. This if true and enforced would mean total destruction to investments aggregating nearly half million dollars by Americans. Our interests, which were so well protected under the administration of President Adrade, have been continually menaced in Venezuela by the Castro Government. I will guarantee that this is an attempt to rob the American Orinoco Companies of their properties, and turn them over to the same English crowd who are operating under cover with Turnbull, concerning which you cabled to Minister Loomis under date of May second, 1899. We rely upon our Government cabling tonight to ascertain the facts, and taking such steps as will effectually prevent the consummation of the wholesale robbery. Such men as Donald Grant, T. B. Clement, president of First National Bank, Faribault, and other western

men of prominence, who are connected with the Orinoco Company Limited and are a guarantee of its standing, as well as the shareholders in the Orinoco Iron Company, among whom are Marcellus Hartley, John E. Searles, John Shepard, August Belmont and men of that order, will not submit to such imposition. Pardon my telegraphic communication but the urgency of the situation requires our government's prompt communication with Venezuela. I am calling a meeting of the associates from the west, as well as eastern shareholders, and will then at once come to Washington. I believe Senator Davis is fully advised as to the situation, and will corroborate and defend our position, and I refer to Senator Thurston as to the reliability of my statements. Besides the above the Orinoco Iron Company has its deeds recorded and has never been accused of delinquency, and the Venezuelan Government after legal sale in May ninety-nine collected nearly Thirty thousand Dollars in gold, which legal sale was confirmed by the highest Court of record in that government. I send you this tonight in hopes that our government may have received authoritative information and taken steps in our defence before publication in the newspapers.

A. B. ROEDER,
President Orinoco Iron Company.

166 (PLAINTIFF'S ROEDER EXHIBIT No. 5.)

Office of the

Orinoco Company, Limited,

Incorporated under the Laws of the State of Wisconsin.

Capital, $30,000,000.

Faribault, Minn., March 12th, 1900.

The Orinoco Iron Company,
52 Broadway, New York.

GENTLEMEN:

I beg to advise you that at a meeting of the Board of Directors of the Orinoco Company, Limited, duly held March 6th, 1900, a quorum being present, the following resolution was unanimously adopted:

Resolved that the National Bank of North America of the City of New York be designated as the place of payment of the royalties payable to our company by the Orinoco Iron Company under the terms of the contract between us and said Iron Company of date July 22d 1897 and the contracts supplementary to and amending the same, and that the Secretary be instructed to forthwith notify said Iron Company of such designation.

Yours truly,

H. T. KYLE,
Secretary.

167 (PLAINTIFF'S ROEDER EXHIBIT No. 6.)

Address Bureau of Navigation, Navy Department, and refer to No. 248,675. HHW. crh.

Washington, D. C., January 12th, 1901.

SIR:

The receipt is acknowledged of your letter of January 10th, addressed to the Secretary of the Navy, requesting that if available, a United States vessel be sent to visit the properties of the Orinoco Iron Company on the Orinoco River, and report as to the situation of American Interests in that neighborhood, and to make an examination of the hydrography of that branch of the Orinoco River, which leads from the main channel to the mines of the Orinoco Iron Company.

In conformity with your request, the Department, on the 11th instant, issued orders to the U. S. S. Scorpion, of which the enclosed is a copy.

It is not practicable on short notice to make a thorough hydrographic examination of the part of the Orinoco River to which you refer. In order to make such an examination, it would be necessary to obtain the formal permission of the Venezuelan Government.

The orders sent to the Scorpion were mailed to La Guiaira. It is desired that they be held in confidence by you.

Very respectfully,

A. S. CROWINSHIELD,
Chief of Bureau.

A. B. Roeder, Esq., President Orinoco Iron Company, 52 Broadway, New York, New York.

168 (PLAINTIFF'S ROEDER EXHIBIT No. 7.)

248,675. HHW.

Navy Department,

Washington.

January 11, 1901.

SIR:

The Department transmits herewith a copy of a letter from the President of the Orinoco Iron Company, in regard to the condition of the properties of the Company on the Orinoco River.

You will proceed with the vessel under your command up the Orinoco River to the property of the Company. Upon arrival there, you will examine into the work undertaken by the Company, and investigate the conditions existing as to American capital invested in that vicinity.

You will report to the Department in full in regard to these matters. Protect American interests in all ways proper.

Without establishing shore stations, you will make such reconnoissance as practicable with the instruments on board, of that branch of the Orinoco River which leads from the main channel to the mines of the Company.

The Manager and representative of the Company at La Guaira and Port of Spain, respectively, will be directed by the Company to aid you with such facilities and information as in their power, and should the services of either be required, the Company has authorized you to call upon their manager for his personal services without pay.

Very respectfully,
(Signed) JOHN D. LONG,
Secretary.

Commanding Officer U. S. S. Scorpion.

SB.

169 (PLAINTIFF'S ROEDER EXHIBIT No. 8.)

Copy.

Office of the

Orinoco Company, Limited,

Incorporated under the Laws of the State of Wisconsin.

Capital, $30,000,000.

Faribault, Minn., March 8th, 1901.

Orinoco Iron Company,
52 Broadway, New York.

GENTLEMEN:

We have retained the enclosed notice and letter of November 27th last, in hope that your affairs might get into shape so that we might make some mutually satisfactory arrangement, avoiding the cancellation of your contract, but are assured that it cannot be expected that you will become capable of carrying out the same or any other contract securing the exploitation of the iron resources of the concession, and therefore are compelled reluctantly to declare the contract at an end.

Yours truly,
(Signed) H. T. KYLE,
Secretary.

170 PL'F's EX. ROEDER No. 8—Cont'd.

Office of the

Orinoco Company, Limited,

Incorporated under the Laws of the State of Wisconsin.

Capital, $30,000,000.

Faribault, Minn., Nov. 27, 1900.

To the Orinoco Iron Company,
52 Broadway, New York.

GENTLEMEN:

We enclose you notice of termination of contract of July 22d.

We have been, as you have been advised, and are willing to have this contract reinstated if you could give satisfactory assurance of your intention and ability to perform the same.

We are credibly informed that you are hopelessly involved in debt; that your negotiable paper is dishonored; that executions on judgments against you have been returned unsatisfied, and a Receiver thereupon about to be applied for and appointed.

Yours truly,

THE ORINOCO COMPANY, LIMITED,
(Signed) By H. T. KYLE,
Secretary.

171 PL'F's EX. ROEDER No. 8—Cont'd.

To the Orinoco Iron Company:

You and all whom it may concern are hereby notified that the Orinoco Company Limited terminates the contract of date July 22d, 1897, heretofore entered into by and between the Orinoco Company Limited and the Orinoco Iron Company, as amended, and all the rights, privileges, licenses and immunities thereunder.

A true copy of the resolution of the Board of Directors of said Orinoco Company Limited respecting said matter is hereto attached.

Dated, November 26th, 1900.

Yours truly,

THE ORINOCO COMPANY, LIMITED,
(Signed) By A. C. ROGERS,
Its President, and
H. T. KYLE,
Its Secretary.

(Corporate Seal Orinoco Company, Limited.)

172 PL'F'S EX. ROEDER NO. 8—Cont'd.

Whereas, it is provided by the contract of date July 22d 1897, entered into by and between the Orinoco Company Limited and the Orinoco Iron Company, as follows, that is to say, quoting from said contract:

"It is further agreed, and all the rights herein granted are granted upon the express condition, that in case the said Iron Company, its successors or assigns, shall default in the performance of any of the conditions, covenants or agreements of this instrument to be kept or performed by it or them, and such default shall continue for a period of ninety days, then and thereupon the said Orinoco Company may at its option terminate this agreement and all rights, privileges, licenses and immunities thereunder by notice in writing to the said Iron Company, its successors or assigns, served either personally or by mail at the principal place of business of said Iron Company or at any office of said Company regularly maintained for the transaction of business."

And whereas said Orinoco Iron Company has heretofore defaulted in the performance of the conditions, covenants and agreements aforesaid, and such default has continued for said period of ninety days and upwards, to the great damage and detriment of the interests of said Orinoco Company Limited:

Therefore be it resolved by the said Orinoco Company Limited that it hereby elects and determines, in the exercise of the option given in and by said contract, to terminate the same and all the rights, privileges, licenses and immunities of said Orinoco Iron Company thereunder.

Resolved further that the President and Secretary of our Company are hereby authorized and directed to forthwith give notice in writing to the said Orinoco Iron Company, its successors and assigns, of our exercise of said option and election to terminate said contract and the said rights, privileges, licenses and immunities as aforesaid.

173 (PLAINTIFF'S ROEDER EXHIBIT NO. 9.)

Orinoco Iron Company,

52 Broadway.

Tel. 15 Broad.

New York, April 17th, 1901.

The Orinoco Company, Limited,
Faribault, Minn.

GENTLEMEN:

In the matter of your writings, which you term "Notice of Termination of Lease," we desire to repeat that the mere "obiter dictum" on your part does not and cannot cancel that document or our rights,

thereunder, since, as you are well aware, we have more than complied with all conditions it was possible to impose upon us.

Your Company, through your officers and directors, have been shown original documents by us giving legal opinions of your own attorneys as to the lack or menance in and to the titles, as to the difficulties surrounding the possession and operation of the properties, making it inconsistent with prudent business principles to operate the same, and you cannot divest yourselves of the knowledge that you gained at the conference at which Ex-Secretary Olney, Mallet-Prevost, your Mr. Grant, Mr. Clement, Mr. Baxter and others were present, which conference was held for the very purpose of disposing of the conflicts and complications with the Venezuelan Government, with Turnbull, et al.

You are also aware of the fact that this Company neither legally nor equitably should have been called upon to advance nearly Thirty thousand Dollars to carry on the litigation in the protection of the Parent Company's titles.

Being able to establish our position in the premises we await developments with interest, and we expect to be prepared to maintain our rights. There is no necessity of further discussing the legal phase of affairs, since this is neither the time nor place. From your notice, however, we judge that will be a matter to be determined before the proper local tribunal. If you are correct in the statement in the letter which accompanied your last notice—that this Company is near its end—then the damage which your Company
174 and the individual members of your Company have occasioned will necessarily be much greater.

We sincerely regret that up to the present time it has been impossible to commence the attack upon the thousand million tons of Bessemer ore at Sta. Catalina or any part of that at Manoa; we await the advices from you that you are in position to give proper title, possession & unhampered operations at which time we will establish our ability to carry on operation in accordance with the terms of our contract.

Yours very truly, A. B. ROEDER,
Pres't.

175 (PLAINTIFF'S EXHIBIT BAXTER NO. 1.)

Copy, certified by Secretary of State, of paper entitled "United States of America, Department of State. Memorial. The Orinoco Corporation, Complainant, against the Republic of Venezuela."

This was a petition addressed to the Secretary of State of the United States, in which the memorialist, the Orinoco Corporation, complained of the spoliation of its rights and confiscation of its property in the Fitzgerald Concession, copy of which Concession is set forth as Exhibit "B" to plaintiff's petition.

The Memorial was signed "The Orinoco Corporation, by Geo. N. Baxter, Attorney in Fact," and dated March 2nd A. D., 1906.

The Memorial was submitted to the Secretary of State by said Geo. N. Baxter in a letter of the same date.

The Memorial alleged that the Orinoco Corporation and its predecessors in interest had complied in good faith with their obligations under said Fitzgerald Concession.

The Memorial alleged that the Republic of Venezuela had neglected and refused to comply with the essential obligations of said Fitzgerald Concession, and that, although the memorialist and its predecessors in interest had complied in good faith with their obligations under said contract, "they have been prevented from obtaining the benefit of the contemplated development of said territories, by unlawful, unconstitutional and arbitrary acts, utterly
176 subversive of said contract, of the Executive authorities of said Government," and that the unlawful, unconstitutional and arbitrary act complained of would result in the utter destruction of the memorialist's vested rights, unless they were preserved and protected by the interposition of the Government of the United States in its behalf.

In support of said allegations, the Memorial referred to the provisions of the Fitzgerald Concession, dated September 22, 1883, giving him and his assigns, for the term of 99 years, the exclusive right to develop and exploit the territories described therein and to exploit the natural resources thereof, and the agreement to establish two ports of entry upon the Concession; the assignment of the Concession to the Manoa Company, Limited, on June 14, 1884; the establishment of two ports of entry on the Concession on June 28, 1884 at Manoa and Pedernales, respectively, which were afterward disestablished; the establishment of a colony upon the Concession by the Manoa Company in September, 1884; an Exective order of the President of Venezuela preventing further operations of the Manoa Company in September, 1886; the pretended grant, in March, 1888, to one Turnbull of the Imataca Mine and later in October, 1888, of the asphalt deposits on the Island of Pedernales; certain insurrections and revolutions between 1889 and 1892; recognition by the Government of Venezuela of the rights of the Manoa Company in May, 1895; the annulment of the Turnbull grants to Imataca and Pedernales, and the Executive Resolution of July 10th segregating Pedernales.

The Memorial further alleged the assignment by the Manoa
177 Company to the Orinoco Company, October 16, 1895, of all of said Fitzgerald Concession, except said deposits of iron at Imataca and of asphalt at Pedernales; the reestablishment by the Orinoco Company of a colony upon said Concession in December, 1895, and the assignment by the Orinoco Company to the Orinoco Company, Limited, on Feburary 10, 1896, of all of said Concession, except said iron reposits of Imataca and asphalt deposits of Pedernales.

The Memorial then alleged that in 1896 the Orinoco Company, Limited, presented several petitions to the National Executive for the establishment of a port of entry, or custom house in the vicinity of Santa Catalina, which were not granted; that by Resolution of November, 1896, the National Executive recognized the validity of the transfer made by the Manoa Company to the Orinoco Company, Limited, and that on or about December 30, 1896, the Manoa

Company through its receiver assigned the mines of Imataca and Pedernales to said Orinoco Company, Limited.

The Memorial further alleged:

178 *Sec.* 40. On the 22nd day of July, 1897, the Orinoco Company Limited entered into a contract (amended in 1898) with the Orinoco Iron Company, a corporation organized under the laws of the State of West Virginia, for the development of the industry of iron mining, and the exploitation of the iron deposits upon the Concession.

Sec. 41. In August, 1898, the Orinoco Company Limited and the Orinoco Iron Company ascertained that possession of said iron deposits of Imataca had been clandestinely taken by the Orinoco Iron Syndicate in the year 1896, under a lease of his so-called mine to it by said Turnbull; that said Syndicate in taking possession of said premises had, as was claimed by the Venezuelan fiscal authorities, violated the revenue laws of said Republic by not entering its machinery, materials, provisions, &c, at any port of entry thereof, and had thereby incurred, as was claimed by said authorities, the confiscation of the steamer "Newday", and its cargo of said machinery, materials, &c., as well as a pecuniary penalty of approximately two hundred and fifty thousand bolivars; that the confiscation of the vessel and cargo had been consumated, but the pecuniary penalty had not been paid, *and that the Government was in possession of said so-called mine, claiming that the judgment for said penalty was a lien thereon, and that it had the right to withhold the possession thereof until said judgment was satisfied.* (*Ralston's Report, pages* 218-219.)

179 *Sec.* 42. By the laws of Venezuela, as your Orator is informed and believes, the grantor or lessor was, and now is obliged to put its grantee or lessee in peaceable possession of the granted or demised premises; and the Orinoco Iron Company thereupon insisted that the Orinoco Company Limited was under obligations to deliver to it possession of said premises. (*Laws and Decrees of Venezuela, Civil Code, Secs.* 1538-9.)

Sec. 43. In order to obtain possession of said so-called mine and terminate Turnbull's alleged title thereto, the Orinoco Company Limited was compelled to purchase the same at the public auction thereof by the Government, under execution upon said judgment at Ciudad Bolivar, November 18th, 1898, and to pay the Venezuelan authorities therefor the sum of one hundred and twenty thousand bolivars, which was done on or about the 19th day of December, 1898, and the said Orinoco Iron Company afterwards put in possession of said iron deposit. (*Ralston's Report, page* 219.)

Sec. 44. Said Orinoco Iron Company thereupon commenced its mining operations upon said premises on or about the 1st day of March, 1899, and in December of that year shipped its first cargo of ore in the steamship "Tresco" to Philadelphia.

Owing to the fact that the Venezuelan Government had not established a port of entry or custom house upon the Concession
180 as required by Article III of the Fitzgerald Contract (the nearest custom-house being at Ciudad Bolivar, more than 180

niles distant), the "Tresco" was detained, as your Orator is informed and believes, at Manoa, the place of shipment, for more than en days; the demurrage resulting from such delay absorbing all the profit upon such shipment.

Sec. 45. Therefore, pending the efforts to obtain customs facilities, he operations of said Orinoco Iron Company languished, although he mining of ore was containued on a small scale until the Venezuelan Government, on August 4th, 1900, by force, dispossessed the Companies from said premises (*Ralston's Report, page* 221.), thereby otally discuraging said Orinoco Iron Company, which abandoned its aid contract.

And your Orator is informed and believes that such illegal dispossession of said premises has continued up to this day, in spite of protest against the same.

Sec. 46. In an action brought in the Court of the First Instance of he Federal District (which had no jurisdiction of the Fitzgerald Contract), by Turnbull against Lockwood, the Agent of the Orinoco Iron Company, and the Orinoco Company Limited, it was determined, on or about June 9th, 1900, that the said Orinoco Company Limited had acquired no title to the said so-called Imataca mine under the said Bolivar Judical Sale of November 19th, 1898. (*Ralston's Report, pages* 220, 221, 222, 223.)

181 The Memorial further alleged that "On the 10th day of October, 1900, by an Executive Resolution of that date, it was again declared 'by the Supreme Chief of the Republic' that the said Fitzgerald Contract-Concession was insubsistent."

The Memorial further alleged that "In March, 1900, the Orinoco Company, Limited, had entered into a firm contract with one Charles B. Duffy, of Worcester, Mass., and his associates, for the exploitation of the asphalt deposits upon the Island of Pedernales, who were proceeding to enter upon active operations under the same, when, being informed of the said Executive Resolution, they abandoned the performance of said contract," and that an agreement negotiated by the Orinoco Company, Limited, in October, 1900, with Messrs. Power, Jewell and Duffy, at Boston, Mass., for the disposal of approximately $800,000 of its capital stock was frustrated by the promulgation of said Executive Resolution."

The Memorial further alleged:

Sec. 57. The immediate effect of the publication of this Resolution in this country was to utterly discredit the enterprise and paralyze the operations of the Company (*Ralston's Report, page* 224); and in Venezuela, where the will of the Chief Executive is supreme, its effect to all intents and purposes, was to outlaw the Company, which it arbitrarily and illegally declared had no rights under the Contract which the public authorities were bound to respect.

182 *Sec.* 58. On or about the 15th day of January, 1901, the Orinoco Company Limited assigned and transferred the Fitzgerald Concession, including the said deposits of iron at Imataca and the said deposits of asphalt at Pedernales, unto your Orator; notice

of which was given to the Venezuelan Executive by the filing of the joint annual report of the Orinoco Company Limited and The Orinoco Corporation in the Ministry of Fomento, during the year 1901, and on or about August 1st, 1901, and by the formal certificate of said transfer, which was afterward filed in said Ministry.

Sec. 59. On May 15th, 1901, the Orinoco Company, Limited, and your Orator, addressed a joint formal protest against said Executive Resolution of October 10th, 1900, to the Minister of Fomento, which protest was afterwards on or about the 1st day of June, 1901, filed in said Ministry, without result. (*Copy on file in Department of State.*)

Sec. 60. On or about the 31st day of January, 1901, one Padron Ustariz, a Venezuelan citizen, and others, including some of the local officials who had made the unfriendly reports above mentioned, proceeding as if the title of your Orator to the said Fitzgerald Concession was insubsistent and annulled, pretended to locate or accuse several iron, asphalt, and coal mines upon the Concession in the vicinity of Manoa; and such proceedings were had in
183 said matter in alleged accordance with the formalities prescribed by the Mining Laws of Venezuela; that afterwards, on or about the 1st day of June, 1901, the alleged definitive titles or patents to said alleged mines were granted and issued to them by the National Executive authorities.

Sec. 61. Your Orator's title to the Concession being thus disparaged by said Executive Resolution and the grants of the alleged mining titles, and the Executive authority of the Nation being in competition, in the Revolutions on foot during that period (Oct. 10th, 1900 to Aug. 1st, 1903), between the rival claimants to the Presidency; your Orator considered it unavailing to take any further steps for the acknowledgment of its rights by the Government of Venezuela, and deemed it imprudent to enlist and invest the amount of capital necessary to inaugurate or continue operations upon the Concession on a large scale; and therefore limited itself to the maintenance of its colony thereon, at Santa Catalina; until:

Sec. 62. Your Orator, being informed of the Protocol of February 17th, 1903, and the opportunity presented thereby to obtain an adjudication upon the validity and subsistency of the Fitzgerald Concession, sent its representative, Glen E. Lathrop, to Caracas to assist the representative of the Manao Company Limited, and the Orinoco Company Limited, in the prosecution of their claims against the Republic of Venezuela, which were predicated upon the validity and subsistency of said Concession.

184 The Memorial then referred to the presentation on or about June 1, 1903, by the Government of the United States of America, to the Mixed Commission appointed under the Protocol of February 17, 1903, between the United States and Venezuela, of the claims of the Manoa Company, Limited, and the Orinoco Company, Limited, respectively, and referred to the decision of the Umpire of the Mixed Commission holding that the Fitzgerald Concession was legally subsisting, and that the mines at Pedernales and Imataca formed part of said Fitzgerald Concession, and that

Turnbull's alleged title to these mines was void; and that on January 24, 1904, the High Federal Court of Venezuela in the case of the New York and Bermudez Company against Warner and Quinlan, declaring the invalidity of the Warner-Quinlan titles, also decided, *in principle*, that said alleged mining Concessions of "Imataca" and "Pedernales" were invalid as against Fitzgerald and his assigns.

The Memorial further alleged:

Sec. 74. And your Orator avers, that between the 12th day of April, 1904, and the 25th day of October, 1905, your Orator, assuming that the Venezuelan authorities would respect the principle of the said decisions of its High Federal Court, and the said decision of the said Mixed Commission, entered into negotiations looking to the resumption of the iron mining operations upon the Concession in the vicinity of Manoa, and the resumption of other operations upon said Concession, and on or about the 5th day of October, 1905, had entered into a contract with Messrs. Pilling and Crane, of Philadelphia, Pa., for the sale and delivery to them of approximately twenty-five thousand tons of iron ore during the year 1906; and afterwards, on or about the 25th day of said month, it entered into a provisional contract with one Harold H. Verge, of Port of Spain, Trin-
185 idad, for the mining of said ore.

* * * * * * *

Sec. 76 On the 17th day of March, 1905, said Padron Ustariz commenced a suit in the Venezuelan Federal Court against the Manoa Company, Limited, the Orinoco Company, Limited, and the Republic of Venezuela, asking that it be declared and adjudged that the said Fitzgerald Concession was insubsistent and of no force and validity at the date mentioned (January-July, 1901), when said Padron Ustariz had, as he alleged, accused and obtained definitive titles under the Mining Law of Venezuela to the alleged mines of iron in the vicinity of Manoa on the Concession, as hereinbefore mentioned.

* * * * * * *

Sec. 81. Your Orator's Steamship, The Perla, was seized by the military authorities of the Republic and afterwards destroyed, while employed in that service, without reparation or offer thereof.

Sec. 82. All the protests and petitions of the Orinoco Company, Limited, and your Orator in the premises were utterly unavailing.

Sec. 83. Between the 9th day of September, 1886, and the 23d of May, 1895, the public order in Venezuela was disturbed by several insurrections and revolutions, including that begun by General Crespo, which was successfully concluded in October, 1892.

Sec. 84. Between March, 1898, and August, 1903, there occurred in Venezuela the ten insurrections and revolutions, including those of General Hernandez, General Castro, and General Matos, mentioned on pages 1060 to 1066 of Ralston's Report, which tended to paralyze all commercial enterprise in Venezuela, and some of

which seriously embarrassed the Orinoco Company, Limited, and your Orator in their efforts to forward their works of colonization, development and exploitation.

* * * * * * *

186 *Sec.* 88. The Orinoco Company, Limited, and its lessees, as your Orator is informed and believes, economically expended in its works of colonization, development and exploitation of said Concession under said Fitzgerald Contract, and its necessary expenses of administration and in the endeavor to have its rights under said Contract recognized, the aggregate sum of more than three hundred thousand dollars, over and above all its receipts from the exploitation thereof.

The Memorial therefore prayed that the Government of the United States of America, acting in that behalf through its Department of State, demand of the National Executive Authority of Venezuela that it comply with its obligations to the Orinoco Corporation under said Fitzgerald Contract, and especially:

"First. That your Orator be restored to possession of the said iron deposits of Imataca, of which it was forcibly deprived by said Government on August 4th, 1900."

The Memorial further prayed that the Executive Resolution of September 9, 1886, be rescinded by the Venezuelan Government and that said Government cancel the several pretended mining or other concessions granted by it within said Fitzgerald Concession, and that possession thereof be restored to the Orinoco Corporation; that the Venezuelan Government establish a custom house or houses upon said Fitzgerald Concession in compliance with the stipulation of its contract of September 22, 1883, and that in view of the time lost by the contractor, owing to the acts and through the fault of the Venezuelan Government, the advantages and immunities granted under Article IX thereof, shall be extended for a period equal to the time so lost, in view of which the Orinoco Corporation would waive all its claims for damages against said Government of every kind whatsoever.

187. (*Affidavit Attached to Memorial, Baxter No.* 1.)

UNITED STATES OF AMERICA,
District of Columbia,
City of Washington, ss:

George N. Baxter, of the City of Faribault in the State of Minnesota, being first duly sworn, deposes and says:

That he subscribed the foregoing Memorial as the Attorney in fact for The Orinoco Corporation, under and by virtue of a Resolution of the Board of Directors of said Company. That he has been one of the Directors of the Orinoco Company Limited, mentioned in said Memorial, and its General Counsel and Attorney ever since on or about the 10th day of February, 1896, and a Director and General Counsel and Attorney of said The Orinoco Corporation ever

since on or about the 10th day of January, A. D. 1901, and is familiar with all the facts set forth with respect to said Companies' affairs in said Memorial. That he has read said Memorial and that the facts set forth therein are true of his own knowledge and that derived from records and official documents and translations thereof which he has seen, except as to the matters therein stated upon information and belief, and that as to those matters he is informed by credible persons acquainted therewith, and verily believes the same to be true.

GEO. N. BAXTER.

Subscribed and sworn to before me this 2 day of March, A. D. 1906.

EDWARD F. RIGGS,
Notary Public, D. C.

188 (PLAINTIFF'S EXHIBIT BAXTER No. 2.)

Copy, certified by Secretary of State, of argument made on behalf of the Orinoco Corporation in support of its Memorial (Plaintiff's Exhibit Baxter No. 1).

This argument was signed and submitted by Geo. N. Baxter and Ralston & Siddons as Counsel for the Orinoco Corporation. It is dated March 5, 1906, and is stamped Received by the State Department March 12, 1906.

This argument, among other things, states:

"In 1898-9 the Orinoco Company Limited, its colonists and lessees, though obstructed and impeded by want of customs facilities, and perturbed by the Hernandez and Guerra Insurrections, were engaged in the industries of lumbering, iron mining, agriculture and the exploitation of balata gum, in and about which they had expended *more than a quarter of a million dollars*, when the Venezuelan Congress (at the instigation of interests which apprehended they would be jeopardized by the success of the enterprise, and of other interests which in disregard of its rights were desirous of exploiting the resources discovered by it upon the Concession and reported to the Government), by its Act of April, 1899, directed the President to proceed against the Company in the High Federal Court for a cancellation of its Concession, upon the ground, not that the Contract had been annulled by the September 9th Resolution, nor that it had failed in performance; but upon the sole ground that said Concession was an unconstitutional act. (*Memorial, Secs. 48, 51.*) Though advised by its counsel, learned in the law of that country, that such action would prove ineffectual, the Company naturally was alarmed at the prospect of expensive and tedious litigation threatened by that Act.

"The Revolution of 1899 and 1900, which involved Venezuela in war from center to circumference, followed upon the heels of this Act of Congress. (*Ralston's Report, pages 1060-1061.*)

"That the Company under this accumulation of adverse circumstances did not enlarge its works and make further large outlays of money in the prosecution of the enterprise during the years 1899 and 1900, can not be justly regarded as a breach of any obligation resting upon it under the Contract, even if obligation there was under any circumstances, which is not admitted, to colonize, develop, and exploit the Concession to any *definite* extent, or, under the adverse circumstances mentioned, even *to the extent of what had already been accomplished.*

"It would have been absurd for the Government itself, during those years (1899 and 1900) to have attempted colonization or to have invited the investment of moneys in the establishment of industries in Venezuela, and much more so for the Company, whose very *right* to invite colonization, industrial development, or exploitation upon the Concession, was challenged by the principle "of the Executive Resolution of July 10th, by the said Act of Congress, and jeopardized by the notoriously hostile attitude of the National Executive and the State and Local Authorities toward the enterprise. (*Memorial, Sec. 52.*)"

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* * * * * * *

"The hostile, arbitrary and vacillating course of the Government toward the grantees of the Fitzgerald Concession, from the illegal annulment of their Contract on September 9th, 1886, to the equally illegal annulment on October 10th, 1900, was calculated to paralyze every effort to fulfill their obligations, destroy their credit, create expensive litigation, and involve in financial ruin every person induced to invest his capital in the Company's enterprise, in reliance upon the good faith of the Venezuelan Government. Enterprises of pith and moment require for their successful prosecution and depend upon the stability of right, the protection of law, the sacredness of obligations, and the inviolability of contracts. Of all these elements necessary to success the grantees of the Fitzgerald Contract were deprived by the arbitrary acts of the Venezuelan Government, which, in equity and justice can not now be heard to complain that the said grantees did not in the presence of such obstacles and in opposition to the unlawful exercise of superior force, fulfill their obligations."

* * * * * * *

"We have seen also the repeated threats and denunciations of annulment of the Concession,—the confiscation and destruction of our property,—the attitude assumed in the Padron suit in direct contravention of the judgment of all of the Tribunals above mentioned, and the dismemberment of the Concession by the several grants of adverse rights and titles by the Resolution of November 20th and the Concessions of 1901 and 1906."

190 (PLAINTIFF'S EXHIBIT BAXTER NO. 3.)

Copy certified by State Department of Supplementary Argument, dated March 12, 1906, submitted by George N. Baxter and Jackson H. Ralston in support of the Memorial of the Orinoco Corporation. This Supplementary Argument states, among other things, that—

"the explorations which we and our predecessor Companies have made since 1884, indicate the existence of valuable deposits of that metal in the gold fields of the Cuyuvini region, and justify the belief that the deposits thereon of Bessemer iron ore, are among the largest and, because of their exceptional high quality and of their accessibility, among the most valuable in the world."

Said Supplementary Argument concluded:

"If, however, insuperable difficulties are encountered in the way of obtaining the recognition of our rights and the performance of the Contract by the Venezuelan Government, and it is considered by the Department, that, notwithstanding all the circumstances of the case, it is not advisable to insist upon the relief prayed for in our Memorial, then and in that event, in view of the arbitrary acts of the Venezuelan Executive Authority complained of in our Memorial, and the subsequent similar act or acts of that Authority, done and apprehended; we ask that the further dismemberment of our Concession shall if possible be prevented, and the Venezuelan Government be required to make reparation in damages for the manifest wrongs and injuries which we have suffered under its infliction; and to *satisfy* such award as may be made in the premises."

191 (PLAINTIFF'S EXHIBIT BAXTER NO. 4.)

Copy certified by State Department of letter signed "Jackson H. Ralston, George N. Baxter for the Orinoco Corporation," dated March 20, 1906, addressed to Secretary of State, Washington, D. C., submitting draft of instructions to the American Minister at Caracas.

The draft of instructions inclosed was in the form of a letter from the Secretary of State at Washington to the American Minister at Caracas, Venezuela, stating that the Department had "maturely considered the Memorial of The Orinoco Corporation" and had found its representations established, and instructing the American Minister to bring the matter to the attention of the Executive Authorities of Venezuela and insist upon their keeping the obligations of Venezuela under the Fitzgerald Concession, and especially, among other things,

"First. To restore to the said Orinoco Corporation possession of said iron deposits of 'Imataca,' of which it was forcibly deprived by said Government on August 4th, 1900."

192 (PLAINTIFF'S EXHIBIT BAXTER NO. 5.)

Copy certified by Department of State of Protest of the Manoa Company, Limited, and the Orinoco Company, Limited, against the Republic of Venezuela.

Dated March 5, 1906. Received by State Department March 12, 1906.

Said Protest reads:

"Matter of the Claims of the Manoa Company, Limited, and the Orinoco Company, Limited, against the Republic of Venezuela.

"To the Honorable the Secretary of State of the United States, Washington.

"SIR:

"The above named Companies, which were Claimants against the Republic of Venezuela, before the Commission appointed under the Protocol between the Governments of the United States, and of said Republic, signed at Washington, February 17th, 1903, respectfully Protest against the decision and award of the Umpire, disallowing certain of the claims mentioned in their respective Memorials, which were submitted for Arbitration and award to that Commission, and rejected by the Umpire. Which Protest is based upon the grounds hereinafter mentioned; that is to say:

"1st. That the principle of said decision and award, is in manifest opposition to the expressed terms of said Protocol.

"2nd. That said decision and award are founded upon mistake of law, apparent upon the face thereof.

"The Memorials mentioned are on file in your Department, and we ask leave to refer thereto, if necessary, in connection with this Protest.

"It will thereby appear that said Claims were for the damages occasioned to the said Manoa Company by the effects of the Resolution of the National Executive of Venezuela, of date September 9th, 1886; by which its Concession, of date September 22nd, 1883 (known as the Fitzgerald Concession) was declared annulled; and by the grants of said Government, in form of law but without right, of mining titles within the limits of said Concession, and by the effect of the Executive Resolution of date July 10th, 1895, as set forth in its said Memorial. And for the damages occasioned to the said Orinoco Company Limited by its ejectments from the so-called mine of 'Imataca' in 1898, and again (after repossession had been obtained by payment to the Government of one hundred and twenty thousand bolivares), in August, 1900; and by the effects of another similar Executive Resolution, of date October 10th, 1900, by which said Concession was again declared annulled and insubsistent, as set forth in its said Memorial.

"These claims were owned by American Citizens, within the meaning of the Protocol, at the date thereof, and were seasonably and duly presented to the Commission in conformity with the re-

193 quirements thereof; but were rejected by the Umpire, who

refused to take cognizance thereof because, as he said, that Tribunal had no Jurisdiction to Arbitrate the same, for the reason that such Jurisdiction and cognizance had been given by Article XII of said Contract to the legal Tribunals of Venezuela, which had been by the said Contract 'indicated' as the exclusive judges of the controversy. (Ralston's Report 244 & 245.)

"As he there says, speaking of the above mentioned claims of both Companies:

'There could be no basis for a claim for damages, but the decision of these expressly indicated judges about this question or controversy.' * * *

'The parties have deliberately contracted themselves out of any interpretation of the Contract, and out of any judgments about the ground for damages by reason of the Contract, except by the judges designated by the Contract; and where there is no decision of these judges that the alleged reasons for the claim for damages really exist as such, the parties, according to the Contract itself, have no right to these damages; and a claim for damages which the parties have no right to claim, cannot be accepted.'

"Instead of 'examining and deciding' the claims upon their merits, he rejected them *in limine*, and remitted the claimants to the Venezuelan Tribunals for relief.

"If these claims were based on 'questions or controversies' arising out of the Contract such (as it might have been apprehended) as would arise regarding the interpretation or construction of the same &c., &c., in the course of the execution of the stipulations thereof, and within the meaning of Article XII (which is not conceded), and which the claims had thereby agreed to submit for decision to the local Venezuelan Tribunals; and if our Government would be precluded thereby from diplomatic intervention in such ordinary and anticipated controversies; it would not be so precluded in the case made by said Memorials, founded on the acts, utterly repudiative and subversive of the Contract itself, of the National Executive Power.

"And, if the interested parties could be so bound by that Article, it must be admitted that they might afterwards by another convention, designate another competent Tribunal for that purpose, as was done by the Protocol of February 17th, 1903.

"We assert, therefore, that these claims are now the proper subject of diplomatic intervention; inasmuch as they have not been investigated and determined upon their merits; and do not present a controversy such as it was contemplated should be ruled by Article XII, of the Contract; but a case where the foreign Government has become itself a party to the Contract, and then not only has failed to fulfill its obligations under the same, but has capriciously nullified it, to the great loss of those who have invested their time, labor and capital in the Enterprise, from a reliance upon the good faith and justice of such Government.

(Wharton's International Law Digest, Vol. 2, Section 250, Page 615.)

194 "We submit therefore, that the Government of Venezuela may properly and justly be approached through your Department, with the view to obtain the recognition and satisfaction of said claims, in accordance with the usual proceedure in cases of this impression.

Respectfully submitted,

GEO. N. BAXTER,
Attorney-in-Fact for Memorialists.

"Summary of Claims Mentioned in the Foregoing Protest.

"It having been decided by the Mixed Commission, that the title to the Concession was not divested by the Executive Resolutions or adverse grants mentioned in the Memorials; the alternative Claims for damages, based on that supposition, are omitted from this Summary:

"Claims of the Manoa Company Limited.

"For damages occasioned by the effects of the Executive Resolutions of September 9th and 10th, 1886	$300,000.00
"For damages occasioned by the effects of the Executive Resolution of July 10th, 1895.....	2,000,000.00

"Claims of the Orinoco Company Limited.

"For damages occasioned by the effects of the Executive Resolution of October 10th, 1900.....	$1,000,000.00
"For damages occasioned by the acts of the Venezuelan Government in taking and holding adverse possession of 'Imataca' in 1898, and again in 1900 ($125,000 less $26,620 allowed on account of one item of 120,000 Bolivares).....	100,000.00

195 (PLAINTIFF'S EXHIBIT BAXTER No. 6.)

Copy of letter certified by State Department, marked Received June 22, 1906.

"Washington, June 21, 1906.

"Hon. Elihu Root,
Secretary of State,
Washington, D. C.

SIR:

In re Orinoco Corporation.

"Referring to the draft instruction submitted to you for your consideration in connection with the claim of the above-entitled corporation and its allies, we are authorized to say, after communication had today with Mr. Dolge, and pursuant, except as to amounts, to prior understandings with Judge George N. Baxter, the corporation and its associates will be content to have withdrawn from the instruction all of the concluding paragraphs referring to reinstate-

ment in their contract rights and cancellation of concessions improperly granted by the Venezuelan Government, &c., substituting therefor a call upon Venezuela to pay to the Orinoco Corporation or its representatives or assigns, as damages the sum of $6,000,000, to the Manoa Company, Limited its representatives or assigns, the sum of $2,000,000, and to the Orinoco Company, Limited, its representatives or assigns, the sum of $2,000,000.

"In view of the fact that the original concession conferred upon the concessionaries the exclusive right to exploit 10,000 square miles of territory containing known iron and gold mines of great value, and forests capable of producing large wealth, and of the further fact that the Companies in question have spent many hundreds of thousands of dollars in the exploitation of these territories, such expenditure being rendered fruitless because of the action of the Venezuelan authorities, the amount asked is not, we submit, unreasonable, and is submitted not as a measure of the true value of the concession, but for the purpose of securing an adjustment and compromise.

"We have the honor to be, very respectfully,
Your obedient servants,

RALSTON & SIDDONS."

R. K.

196 (PLAINTIFF'S EXHIBIT NO. —, INTRODUCED IN EVIDENCE AT TRIAL.)

Copy certified by U. S. Department of State of letter of August 27, 1907, addressed to Hon. Elihu Root, Secretary of State, by Ralston & Siddons.

Said letter encloses for consideration of the Secretary of State copy of a communication addressed to Hon. William W. Russell, American Minister, Caracas, Venezuela, by the resident agent of the Orinoco Corporation, on August 17, 1907.

Said letter of Ralston & Siddons also refers to a letter from Mr. Dolge transmitting copy of said communication to Mr. Russell, in which said Dolge states that the Orinoco Corporation is in danger of being despoiled of its personal property on the Fitzgerald Concession, including certain iron ore, and asks that pending the settlement of the present controversy the Venezuelan Government shall maintain the status quo and "shall not allow *anybody* to despoil any of the natural resources situated within the limits of the *Fitzgerald* Concession and above all we ask that any personal property located at Santa Catalina, the Manoa Iron Mines, or Pedernales shall not be interfered with or trespassed upon."

The communication addressed by said Dolge to Minister Russell, dated August 17, 1907, which accompanies said letter of Ralston & Siddons to the U. S. Secretary of State, contains these, among other statements:

"As I have told your Excellency and as is established by sundry photographs and reports of reliable engineers, there are now on the dumps and at the mine at Manoa ready for shipment upwards of

3,000 tons of high grade Bessemer iron ore, representing a value of $20, to 25,000.

"This ore was mined by the Orinoco Iron Company, one of the sub-companies of the Orinoco Company, Limited, of whom The Orinoco Corporation is the legitimate cessionary, and has been contracted by the Orinoco Corporation to a firm of responsible iron merchants at Philadelphia, Pa."

197 (PLAINTIFF'S EXHIBIT NO. —, INTRODUCED IN EVIDENCE AT TRIAL.)

Copy certified by U. S. Department of State of Petition of the Orinoco Iron Company addressed to Honorable Philander C. Knox, Secretary of State, in the Matter of the Award made by the Republic of Venezuela to claimants under the original Fitzgerald Concession.

Said petition refers to the Fitzgerald Concession; outlines the transfer of the title, including the Imataca Iron Mine, from Fitzgerald to the Manoa Company and its ultimate acquisition by the Orinoco Company, Limited; sets forth the contract of July 22, 1897, between the Orinoco Company, Limited, and the Orinoco Iron Company; describes the attempts of the Orinoco Iron Company to operate substantially as alleged in the bill of complaint herein; sets forth the expenditures of the Orinoco Iron Company as stated in paragraph 22 of plaintiff's bill of complaint, and concludes:

"XI. Your petitioner further alleges that it has expended as shown by its books and vouchers, the total sum of $173,908.47 in its endeavor to carry on the work as called for by its contract with the Orinoco Company, Limited, all of which money has been expended and is a total loss to your petitioner.

"Wherefore, your petitioner respectfully prays that the State Department from the moneys received and to be received from the Republic of Venezuela by virtue of a contract of settlement made for the benefit of claimants under the original Fitzgerald concession pay to your petitioner the said sum of $173,908.47, with interest from the year 1900, at which time your petitioner was compelled to withdraw from the country, and your petitioner will ever pray.

ORINOCO IRON COMPANY,
By ALBERT BART ROEDER,
President.

DELMAS, TOWNE & SPELLMAN,
GRIGGS, BALDWIN & BALDWIN,
Attorneys for Petitioner."

This petition was sworn to by said Albert Bart Roeder, President, and James E. York, Treasurer, of the Orinoco Iron Company, under dates of November 6th, 1909 and November 9th, 1909, respectively.

08 (PLAINTIFF'S EXHIBIT BAXTER NOS. 12, 13, 14, 15, 16, & 17.)

Original Letters from State Department.

Department of State,

Washington.

January 25, 1910.

essrs. Delmas, Towne & Spellman,
115 Broadway, New York City.

ENTLEMEN:

Referring to your letter of September 2nd last, I enclose herewith
r your information, and for such action as you may care to take
ereunder, a copy of a notice issued by the Department of State to
l persons alleging an interest in the moneys received from the
nited States of Venezuela by virtue of the protocol of September
1909, arranging for the settlement of the claims of the Orinoco
rporation and its predecessors in interest, the Manoa Company,
imited, the Orinoco Company, and the Orinoco Company, Limited,
gainst the Republic of Venezuela.

I am, Gentlemen,

Your obedient servant,

HUNTINGTON WILSON,
Assistant Secretary of State.

Enclosure: As above stated.

Department of State,

Washington.

April 5, 1910.

essrs. Delmas, Towne and Spellman,
115 Broadway, New York City.

ENTLEMEN:

Referring to your memorial in the "matter of the award made by
e Republic of Venezuela to claimants under the original Fitzgerald
ncession" left at this Department by the Honorable Charles A.
owne November 13, 1909, to the conversation between Mr. Towne
nd the Law Office of the Department at that time, to Department's
rcular notice of January 13, 1910, transmitted to you on January
5, 1910, and to a recent conversation between Mr. Spellman, of
our firm, with the Law Office of the Department, the Department
esires to say that, as was pointed out to Mr. Spellman in that con-
rsation, it understands the memorial left at the Department by Mr.
owne as setting forth an adverse claim sounding either in contract
in tort against the Orinoco Company, Limited. Such a claim is
cognizable by the courts rather than by this Department.

09 The Department, however, as stated in its circular notice of January 13, 1910, will, if you so request, give you ten

days' notice before making any payment out of the fund received from Venezuela under the protocol of September 9, 1909.

I am, Gentlemen,

Your obedient servant,

HUNTINGTON WILSON,
Assistant Secretary of State.

Department of State,
Washington.

May 27, 1910

Messrs. Delmas, Towne and Spellman,
115 Broadway, New York City.

GENTLEMEN:

The Department has received your letter of the 23d instant requesting it to include you among those who would be given ten days' notice before any payment was made out of the fund received from Venezuela under the protocol of September 9, 1909.

The Department will give you the notice as requested. At present the matter of the distribution of the fund is being held up owing to receivership proceedings which have been brought against the Orinoco Corporation in the Courts of West Virginia.

I am, Gentlemen,

Your obedient servant,

HUNTINGTON WILSON,
Assistant Secretary of State.

Department of State,
Washington.

June 20, 1911.

Messrs. Delmas, Towne and Spellman,
115 Broadway, New York City.

GENTLEMEN:

Referring to the previous correspondence in the matter, I enclose for your information a notice issued by the Department of State in regard to the proposed distribution of the moneys received from the United States of Venezuela by virtue of the protocol of September 9, 1909, arranging for the settlement of the claims of the Orinoco Corporation and its predecessors in interest, the Manoa Company, Limited, the Orinoco Company, and the Orinoco Company, Limited, against the Republic of Venezuela.

200

I am, Gentlemen,

Your obedient servant,

P. C. KNOX.

Department of State,

Washington.

September 1, 1911.

ssrs. Zabriskie, Murray, Sage and Kerr,
49 Wall Street, New York City.

NTLEMEN:

The Department has received, by reference from the Treasury De-
rtment, your letter of the 21st ultimo, stating that you are attor-
ys for the Orinoco Iron Company, which has a large claim against
e Orinoco Company, Limited, and that you assert a claim to the
oney paid by the Government of Venezuela to the Government of
e United States in virtue of the Protocol of September 9, 1909.

In reply I desire to say that the Department of State, in making
determination as to the distribution of awards or settlements of
ernational claims, is always guided by certain fundamental rules,
ich may be roughly stated as follows:

The awards are distributed among the original claimants showing
emselves entitled thereto, or to the heirs, representatives, devisees,
legal assignees of such claimants. On occasion the Department
o makes payments to such other persons in such amounts as the
rties above indicated, being determined, shall agree and direct.
xcept as to such claimants claiming to share in the award as claim-
ts, or their heirs, devisees, representatives, or legal assignees claim-
g to share in the award by reason of such relationship to such
imants, all parties who allege claims against the fund itself, as also
creditors of such claimants, or of their heirs, devisees, representa-
es, or legal assignees, are in accordance with the uniform rule and
actice of the Department remitted to the courts for the enforce-
ent of the rights of which they consider themselves possessed, or
private agreement with the parties in interest,—as they may be
vised.

In accordance with this plan, the Department of State in distribut-
g the sum paid in settlement of the so-called Orinoco Corporation
se followed the plan of distribution which was set forth in an agree-
ent entered into between the parties in interest as those parties
re named, first, in the Buchanan-Guinan Protocol of February
, 1909, for the Decision and Adjustment of Certain Claims, and
condly, in the protocol of settlement of September 9, 1909, be-
een this Government and the Government of Venezuela,—such
rties being obviously those who, under the circumstances of settle-
ent, were prima facie entitled to receive the award. Companies
iming adversely to the beneficiaries designated in the above named
struments of settlement as well as all persons claiming as creditors
as minority stockholders in any of such designated beneficiaries,
have been uniformly referred to the courts for the enforce-
1 ment of such rights as they may consider they possess.

If, therefore, the Orinoco Iron Company feels that it has a
im against any of such designated beneficiaries, it would seem

that if so advised, it should resort to the courts for the enforcement of such claim.

I am, Gentlemen,

Your obedient servant,

HUNTINGTON WILSON,
Acting Secretary of State.

Department of State,

Washington.

September 20, 1911.

Messrs. Zabriskie, Murray, Sage & Kerr,
49 Wall Street, New York City.

GENTLEMEN:

In reply to the inquiries contained in your letter of the 6th instant, I enclose for your information copy of a statement sent out to various parties desiring such information regarding the distribution of the fund of $385,000.00 which is to be paid by the Government of Venezuela in eight annual installments under a protocol dated September 9, 1909. The Department has directed the payment of the amount received up to this time in accordance with the plan announced in this statement, to wit: Two thousand dollars ($2,000) to the defendant attorneys in Venezuela; seventy thousand two hundred sixty-three and ninety-seven one hundredths dollars ($70,263.97) to the Receiver of the Orinoco Corporation; and seventeen thousand four hundred forty-nine and seventy-one hundredths dollars ($17,449.70) to the Orinoco Company Limited. Treasury warrants for the amount due the Orinoco Corporation were delivered to the Trustee in Bankruptcy under date of June 30, 1911, and on the same date warrants for the defendant attorneys' fees were delivered to their attorney in fact, Mr. Dolge; but warrants for the amount due the Orinoco Company Limited have not yet been delivered. Unless the courts shall in the meanwhile determine that this money is owned by other persons than those indicated in the Department's statement, payments of future installments will be made in accordance with the plan announced.

I am, Gentlemen,

Your obedient servant,

HUNTINGTON WILSON,
Acting Secretary of State.

Enclosure: Statement as above.

In the Supreme Court of the District of Columbia.

Equity. No. 33031.

ORINOCO IRON COMPANY

vs.

WILLIAM M. SAFFORD et al.

Certificate of Court.

I hereby certify that the foregoing is a true and complete statement of the evidence and exhibits adduced in this cause on final hearing, by the plaintiff and the defendants named, and is properly prepared.

WALTER I. McCOY,
Chief Justice.

Signed in duplicate this 23rd day of March, 1923.

202 [Endorsed:] No. 33031. Equity. Orinoco Iron Co., Safford et al. (Enclosed) Submitted this 21" day of Mch. 1923. William R. Harr, Charles H. Bates. Harr & Bates, Attorneys and Counselors at Law, Suite 224 Mills Building, 17th St. and Pennsylvania Ave., N. W., Washington, D. C. Telephone Main 677.

Endorsed on cover: District of Columbia Supreme Court. No. 3989. Orinoco Company, Limited, et al., appellants, vs. The Orinoco Iron Company. Court of Appeals, District of Columbia. Filed May 7, 1923. Henry W. Hodges, clerk.

138 The Court of Appeals of District of Columbia

ORINOCO COMPANY, LIMITED; JOHN W. LE CRONE, Receiver of the Orinoco Company, Limited; Andrew W. Mellon, Secretary of the Treasury of the United States, et al., appellants

vs.

THE ORINOCO IRON COMPANY

No. 3989

Motion and order to file reply brief

On motion the appellants are allowed to file a reply brief herein.

The argument in the above entitled cause was commenced by Mr. Moses E. Clapp, attorney for the appellants the Orinoco Co., Ltd., and John W. LeCrone, Receiver, and was continued by Mr. R. R. McMahon, attorney for the appellants the Secretary of the Treasury and the Treasurer of the United States, and by Mr. E. S. Duvall, attorney for the appellee, and was concluded by Mr. Wm. R. Harr, attorney for the appellee.

139 In Court of Appeals of the District of Columbia

[Title omitted.]

Opinion

Before Smyth, Chief Justice, Van Orsdel, Associate Justice, and Smith, Judge of the United States Court of Customs Appeals.

Mr. Chief Justice Smyth delivered the opinion of the court:

SMYTH, Chief Justice: This is an appeal from a decree of the Supreme Court of the District of Columbia establishing the equitable claim of appellee to the sum of $56,250, in the Treasury of the United States, and awarding an injunciton against the Secretary of the Treasury and the Treasurer of the United States to prevent payment of the sum just mentioned to the Orinoco Company, Limited, or its receiver, two of the appellants, or to anyone except the receiver appointed in the decree. The allegations of the bill, so far as we deem them pertinent, are substantially as follows:

In 1883 the Government of the United States of Venezuela granted to one Fitzgerald certain territory in Venezuela for the term of ninety-nine years, with the exclusive right to develop its resources. From Fitzgerald the concession found its way through mesne conveyances into the possession of the Orinoco Company, Limited, in 1896. This company, which we shall hereafter designate as the limited company, had no other assets than the concession. The next year the limited company, by an instrument in writing, granted to the Orinoco Iron Company, appellee, hereafter called the iron company, the exclusive right to mine, remove, and ship iron
140 ore from the concession during its life, and covenanted to execute any further instruments that might be necessary

to assure the iron company its rights under the grant. For the grant the last-named company was to pay to the grantor a stipulated royalty on the ore extracted. The limited company represented to the iron company that at a certain point in the concession there existed iron ore in abundance, and the iron company made contracts for the sale of a million tons per annum at a price which would net to it a good profit. Later it was found that this representation was not correct, and the contracts had to be cancelled. As the result of further negotiations between the limited company and the iron company, the latter was put in possession of an iron deposit called the Imataca mine, a part of the concession. The iron company, as soon as it obtained this, commenced active operations looking towards its development. A large quantity of ore was extracted and placed ready for shipment. Investigation revealed that the deposit was sufficiently large to warrant the iron company in contracting for the sale of a half million tons at an advantageous price.

About this time a revolution broke out in Venezuela, which was successful in overturning the existing government and which drove the iron company out of possession of the property. Up to this time the iron company had spent something more than $175,000 under its contract with the limited company. It had all the money required for peaceful operation of the property and was strongly underwritten by men of ample means. After it was forced out of possession by the revolutionists it frequently called on the limited company to restore it to possession in accordance with its agreement, but the latter failed to do so. About this time the iron company complained to the State Department at Washington about the action of the Venezuelans, and until 1901 continued to make efforts to regain possession of the property.

The revolutionists having succeeded, cancelled the Fitzgerald concession in 1900, and thereby the iron company lost the $175,000
141 it had invested, about 500,000 tons of ore which it had stripped and placed in sight, and the sale of which would have given to it a net profit of about one million dollars, and sustained other losses which it claimed would bring the total of its damage to about $5,000,000. About this time the limited company communicated to the iron company resolutions which it had adopted several months before, but after the revolutionists had dispossessed both companies, declaring the termination of the agreement under which the iron company had secured its right to develop the concession between it and the iron company, on the assumed basis that the latter had failed to perform its part of the contract. The iron company in answer denied that it had failed in any particular, and asserted that it was ready to resume operations whenever allowed to do so. At this time nothing was owing from it to the limited company.

Shortly before this, but after the iron company had been driven out of possession, officers of the limited company and others organized the Orinoco Corporation, a party below but not here, and trans-

ferred to it all the assets of the limited company. We shall designate this new organization as the corporation. In 1906 the corporation filed with the Secretary of State a memorial complaining of the acts of Venezuela, in which it represented that the iron company had abandoned its contract with the limited company after it was forcibly dispossessed, as we have stated, and that all the property of the iron company, including its title to the iron deposits, the improvements which it had placed upon the land, the ore mentioned, and a steamer belonging to it had become the property of the memorialist; and it asked that it, the corporation, be placed in possession. On the same day one Baxter, as attorney for the limited company and the Manoa Company, which appears in the chain of title between Fitzgerald and the limited company, filed a protest on behalf of his clients with the Secretary of State, claiming damages in their behalf from Venezuela because of its action in taking possession of the concession, but making no mention of the iron company's rights or losses. In the protest Baxter made claim
142 to the same property as that which the corporation, grantee of the limited company, averred in its memorial belonged to it. The Department of State of the United States in presenting the claim to Venezuela relied upon the efforts of the iron company to operate the concession as a bona fide attempt on the part of the limited company to comply with the terms of the concession. Proceedings were had which resulted in a protocol being entered into between the United States of Venezuela and the United States of America whereby the former agreed to pay to the United States $385,000 as damages resulting from the action of the revolutionists in dispossessing the concessionaires, and from the subsequent action of the Government of Venezuela in cancelling the concession. The award was made on behalf of the limited company and certain of its predecessors in title.

By the terms of the protocol the United States of America, on behalf of the limited company and the others just referred to, waived in favor of Venezuela all claims which the limited company or the others had against Venezuela arising out of the cancellation of the concession or the seizure and destruction of the steamer belonging to the iron company. The amount of the award was paid into the Treasury of the United States as a trust fund to be distributed to the beneficiaries thereof, the United States having no right, title, or beneficial interest therein.

The iron company further averred that the purpose of the limited company in attempting to terminate its contract, as heretofore stated, was that it might confiscate the rights and property of the iron company and defraud it, and that the protocol between the United States and Venezuela was intended to operate as a sale, release, and extinguishment of all the claims, rights, and interests of the iron company in the concession against Venezuela and to relieve the latter of claims for damages by all persons asserting them under

the concession; and it alleged that it had a beneficial interest and prior lien upon the amount of the award for the sums expended by it as heretofore stated, with interest from the date of its ouster
143 from the concession, and for the losses and damages it had suffered by reason of the ouster; and, also, that the Secretary of the Treasury and the Treasurer of the United States held the amount of the award lodged in the Treasury as trustees for plaintiff, to be applied in satisfaction of its claim. It prayed that a receiver be appointed to take charge of the fund and dispose of the same as the court on final hearing might determine; that the Secretary of the Treasury and the Treasurer be enjoined from cashing any warrant for any portion of the award, except to pay the same over to the receiver appointed by the court, and that on final hearing the injunction be made permanent. It also prayed for injunctive relief against the other defendants' receiving from the Secretary of the Treasury or the Treasurer of the United States any money, warrant, or order on account of the award, and that an accounting of the plaintiff's losses and damages be had, and the award be applied to its payment.

The appellant LeCrone was appointed receiver of the limted company by a Minnesota State court in a suit brought by Baxter against the limited company for $75,000, fees claimed to be due him for services rendered the company. The limited company in its answer averred on information and behalf that the iron company did not expend to exceed $75,000 upon the concession, and that at the time the concession was annulled by Venezuela the iron company was insolvent; denied the other allegations of the bill, and asserted that the iron company was indebted to it for royalties under the agreement.

In their answer the Secretary of the Treasury and the Treasurer admitted that the total amount of the award had been paid into the Treasury of the United States, and that there was a balance of it in the sum of $56,250 remaining in the Treasury, and they challenged the jurisdiction of the court to control their action in the premises.

The court found that the iron company was prevented from going ahead with the performance of its contract by the action of the Government of Venezuela, by revolutions and other occurrences over which it had no control, that the making of the award em-
144 bodied in the protocol was based on these facts, and that the limited company could not question them; also that the iron company was always ready, able, and willing to perform the contract, and was not in default, that it had spent a very much larger amount than the remainder of the award then in the Treasury, and that it was entitled to a decree for the remainder. A decree was entered for that amount, subject to an attorney's lien, which is of no importance here.

The record makes it very clear that the iron company was ready, able, and anxious to proceed with the development of the property; that it had expended about $175,000 for that purpose; that it was

prevented from proceeding with its work by the revolutionists at first, and then by the Government of Venezuela; that there was no basis for the claim of the limited company that the iron company had failed to perform its contract in any respect, and that its declaration that the iron company had forfeited the contract was futile; that all its property, including 3,000 tons of ore ready for shipment, and the right to a very large deposit of ore containing several hundred thousand tons were confiscated by the Venezuelan Government; that the limited company wrongfully represented to the Venezuelan Government that the property and right belonged to it when taken, and that it was entitled to receive compensation therefor; that, relying upon this representation, Venezuela made compensation for the wrongs enumerated, and that in the $385,000 which Venezuela paid on that account was included the value fixed by the protocol upon the property and right just mentioned. In view of this we are convinced that the iron company has a lien ex maleficio upon the balance of the award in the Treasury of the United States. It would be contrary to equity if the limited company should be permitted to enjoy the portion of the award which it secured by its wrongful representations. Mr. Pomeroy, in his work on Equity Jurisprudence, section 155, says: "If one party obtains the legal title to property not only by fraud or violations of confidence or of fiduciary relations but in any other unconscientious manner, so that he cannot equitably retain the property which legally belongs to another, equity carries out its theory of a double ownership,
145 equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner." This principle was approved by the Supreme Court of the United States in Angle vs. Chicago, etc., Railway Co., 151 U. S. 1, 26. In that case it appeared that a railway company, designated as the Omaha Company, had conspired with the officials of the Portage Company to wrest certain land from the latter that it might prevent it from completing a contract which it had entered into to construct a railroad as a consideration for the land, and that through its conspiracy the Omaha Company secured the land. Angle, the plaintiff in the action, had a contract with the Portage Company to construct a part of the railroad for that company. He entered upon the performance of his contract, and had completed a considerable part of it when through the conspiracy mentioned the land was taken from the Portage Company. This resulted in the inability of the company to proceed further, and hence in the breach of its contract with Angle. He sued the Portage Company for damages and secured a judgment. Execution having been returned nulla bona, he filed his bill to reach the land in the hands of the Omaha Company. The court in sustaining his contention said: "Equity recognizes a right that that property should be applied in the payment for that work. The wrongdoing of the defendant, the Omaha Company, has wrested the title to this property from the Portage Com-

pany and transferred it to itself. It has become, therefore, a trustee ex maleficio in respect to the property." To the same effect consult Pioneer Mining Co. vs. Tyberg et al., 215 Fed. 501.

The limited company and LeCrone, its receiver, were served by publication. Both contend that the court did not thereby obtain jurisdiction over them. Lecrone appeared specially and filed a motion to quash the service, but before any action was taken by the court upon his motion he answered the petition of the iron company. This constituted a waiver of his objection to the jurisdiction. In Barnes vs. Western Union Tel. Co., 120 Fed. 550, defendant appeared specially and moved to dismiss because of defective service.
146 Four days later, without having a decision on the motion, it filed a general demurrer and a full answer to the merits. It was held that it had waived the irregularity of process on which it predicated the motion to dismiss. For a discussion of the practice where a party desires to object to the jurisdiction of the court see Eichelberger et al. vs. Arlington Building, Inc., 280 Fed. 997; Church vs. Church, 50 App. D. C. 239, 270 Fed. 361; Harkness vs. Hyde, 98 U. S. 476, 479; and Merchants Heat and Light Co. vs. Clow & Sons, 204 U. S. 286. The general rule is, as shown by the foregoing authorities, that the party must appear specially and object to the jurisdiction. If his objection is overruled, he may reserve an exception and then answer to the merits, renewing the objection in his answer. See also 7 R. C. L., sec. 78, p. 1044, and Arroyo Ditch, etc., Co. vs. Superior Court, etc., 27 A. S. R. 91.

No attack was made upon the service by the limited company except in its answer to the merits. This, for the reason just given, was insufficient.

It is provided by statute (29 Stat. 32) that moneys received by the Secretary of State from foreign governments in trust for citizens of the United States shall be covered into the Treasury, and that the Secretary of State shall determine the amounts due claimants, respectively, from the trust fund, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates, pay the amounts so found to be due. The iron company requested the Secretary of State to recognize its claim and pay the amount thereof out of the fund received from Venezuela. This request was denied by the Secretary on the ground that the claim was cognizable by the courts rather than by the Department of State, and that according to the uniform practice of the department parties holding claims like that of the iron company against a trust fund in the Treasury were remitted to the courts for the enforcement of their rights.

Appellants, including the Treasury officials, point to the
147 statute, which says that the Secretary of the Treasury "shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due," and urge that the courts have no power to direct the Secretary of the Treasury to pay to any person other than one holding a certificate of the Secre-

tary of State. We think this is a misconception of the law. A question quite similar to the one thus presented was passed upon by this court in McAdoo vs. Ormes, 47 App. D. C. 364. Our decision was taken to the Supreme Court of the United States on appeal and was there affirmed. In that case Congress, in an appropriation act, had directed the Secretary of the Treasury to pay to claimants in the act named the several sums appropriated therein. Among those named was one Sanders. It will be noticed that the direction to the Secretary of the Treasury to pay to the claimant the amount appropriated was fully as direct and positive as the direction in the statute which we are considering. One Lockwood instituted a suit in the Supreme Court of this district to establish an equitable lien on the fund appropriated to Sanders, who was made a defendant, together with the Secretary of the Treasury and the Treasurer of the United States. There was a final decree adjudging that a certain sum was due from Sanders to Lockwood, and appointing a receiver to collect from the Secretary of the Treasury the amount involved, and directing the Secretary to pay the same over to the receiver. The Treasury officials challenged the jurisdiction of the court upon substantially the same grounds as those set forth in this case. In denying the soundness of their position the court said that the payment of the fund in question to the defendant Sanders was a ministerial duty the performance of which would be compelled by mandamus. "But from this," continued the court, "it is a necessary consequence that one who has an equitable right in the fund as against Sanders may have relief against the officials of the Treasury through a mandatory writ of injunction, or a receivership which is its equivalent, making Sanders a party so as to bind her and so that the decree may afford a proper acquit-
148 tance to the Government. The practice of bringing suits in equity for this purpose is well established in the courts of the District." Houston vs. Ormes, 252 U. S. 469, 473, in which many cases are cited.

Here the iron company has an equitable right in the fund as against the limited company and LeCrone, and therefore has a right to relief, as Lockwood had, against the officials of the Treasury, through the proceedings which have been taken. We do not think the matter is open to further discussion. The Treasury officials rely for their position on Great Western Insurance Co. vs. United States, 112 U. S. 193, but it affords them no support. That was an appeal from a decision of the Court of Claims which dismissed the complainant's petition for want of jurisdiction. The Supreme Court affirmed this decision. We find nothing in it which bears upon the question now before us.

The iron company is not seeking in this suit to recover anything from the United States. It is conceded, and properly so, that the money in question is held in the Treasury as a trust fund. The Government has no claim to it and it makes none. No matter what the outcome of the suit might be, the Government would receive none

of the fund. For this reason the suit is not against the United States, as argued by the appellants.

The decree must be, and it is, affirmed, with costs.

Affirmed.

149 In Court of Appeals of the District of Columbia

[Title omitted.]

Dissenting opinion

Smith, Judge, dissenting in so far as the opinion affirms the judgment of the lower court enjoining the Secretary of the Treasury.

The moneys involved were paid by the Government of Venezuela to the Secretary of State in satisfaction of claims arising out of the seizure and confiscation by Venezuela of the properties of certain corporations of the United States. The act of February 27, 1896 (29 Stat. 32) provides that—

Hereafter all moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds and certify the same to the Secretary of the Treasury, who shall, upon presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the *ascertained beneficiaries thereof of the certificates herein provided for.* (Italics not quoted.)

Under that act the Secretary of State determines the amounts due to claimants and on his certificates to the Secretary of the Treasury stating the amounts due to them the Secretary of the Treasury is required to make payment to the beneficiaries ascertained by
150 the Secretary of State. The payment by the Secretary of the Treasury to such beneficiaries is, it is true, a mere ministerial function, but it is a ministerial function which he must exercise under the statute in accordance with the determination of the Secretary of State. The appropriation of the moneys necessary to make the payment is not a mere appropriation to pay moneys to persons or corporations named by Congress, but to persons and corporations decided by the Secretary of State to be entitled thereto. In my opinion, the Secretary of the Treasury can not be enjoined from carrying out the determination which the Secretary of State was vested with final and exclusive power to make, especially as the Secretary of the Treasury was directed by the statute to make payment in accordance with that determination. If the Secretary of the Treasury may be enjoined from paying the moneys to the beneficiaries, it is not apparent why mandamus would not lie to compel payment to the plaintiff. Indeed, if it be true that the Secretary of the Treasury can be enjoined from making the payments directed

by the Secretary of State, then, as a corollary of that proposition, it would seem that the findings of the Secretary of State may be controlled and directed by the judicial department of the Government.

As I see the case neither the Secretary of State nor the Secretary of the Treasury is subject to the control of the courts in exercising the functions provided for in the act of February 27, 1896. The court had jurisdiction, however, of the receiver and the beneficiaries in this case and had the power to enjoin them from receiving the moneys and the power to compel the transfer of the balance of the fund to those entitled to receive it.

I am of the opinion that the judgment of the court below should be reversed in so far as it enjoins the Secretary of the Treasury from doing that which the determination of the Secretary of State and the act of Congress required him to do, and that the judgment should be affirmed in all other particulars.

JAMES F. SMITH.

151 In Court of Appeals of the District of Columbia

[Title omitted.]

Judgment. Filed March 3, 1924

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. CHIEF JUSTICE SMYTH.

March 3, 1924.

Judge James F. Smith dissenting.

Judge James F. Smith, of the U. S. Court of Customs Appeals, sat in this case in the place of Mr. Justice Robb.

152 In Court of Appeals of the District of Columbia

[Title omitted.]

Petition for appeal. Filed April 2, 1924

Now comes the above-named appellants and pray an appeal to the Supreme Court of the United States, and that the bond for costs be fixed in the sum of $300.00, or that they be allowed to deposit that amount in cash in lieu thereof.

MOSES E. CLAPP and
GEO. N. BAXTER,
Attorneys for Appellants.

March 29, 1924.

[File endorsement omitted.]

153 In Court of Appeals of the District of Columbia

[Title omitted.]

Assignment of errors. Filed April 21, 1924

I. The court below erred in that it affirmed the decree of the Supreme Court of the District of Columbia, which was null and void, because:

1st. It did not have jurisdiction of appellant (defendant) LeCrone, who was a necessary party.

2nd. It did not have the power to enjoin the defendant, the Secretary of the Treasury, from executing the act of Congress approved Feb'y 27th, 1896 (29 Stat. 32).

3rd. The suit being one in substance against the United States, it was without jurisdiction to hear and determine it.

4th. It did not have jurisdiction, as the suit was brought against a receiver appointed by another competent court, to deprive him of property he was appointed to receive; without the consent of that court.

5th. The court erred in finding that the plaintiff was ready and able to proceed with ~~with~~ the development of the leased property; and was prevented by revolutionists and the Government of Venezuela; that there was no basis for the claim of the limited company (O. C. L.); that the iron company (O. I. Co.) had failed to perform its contract; that the limited company had wrongfully represented to the Venezuelan Government that the property belonged to that company; and that the indemnity fund of $385,000 included the value of plaintiff's property and rights.

6th. It erred in its conclusion that the declaration of *of* the limited company that the iron company had forfeited the contract of lease was futile.

7th. It erred in its conclusion that the iron company has a lien ex maleficio upon the balance of the award in the Treasury of the United States, or that the title of LeCrone thereto is held by him subject to a trust ex maleficio in favor of the plaintiff.

8th. It erred in not reversing the decree appealed from.

Wherefore these appellants pray that said decree be reversed.

MOSES E. CLAPP, and
GEO. N. BAXTER,
Attorneys for Appellants.

March 28th, 1924.

[File endorsement omitted.]

154 In Court of Appeals of District of Columbia

[Title omitted.]

Order allowing appeal. Filed April 2, 1924

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause, it is ordered by the court that an appeal be, and the same is hereby, allowed the Orinoco Company, Limited, and John W. LeCrone, receiver of the Orinoco Company, Limited, with leave to said appellants to make a cash deposit of three hundred dollars with the clerk in lieu of bond.

155 *Memorandum*

April 2, 1924. $300.00 deposited with clerk in lieu of bond.

156 [Citation in usual form, showing service on William R. Harr, filed April 3, 1924, omitted in printing.]

157 In Court of Appeals of the District of Columbia

[Title omitted.]

Motion for an appeal to the Supreme Court of the United States. Filed April 18, 1924

Now come Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States, above-named appellants, and pray an appeal to the Supreme Court of the United States from the decree of the Court of Appeals of the District of Columbia, entered March 3, 1924, in the above-entitled cause.

RICHD. RANDOLPH MCMAHON,
Attorney for the Appellants, Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States.

April 18, 1924.

[File endorsement omitted.]

158 In Court of Appeals of the District of Columbia

[Title omitted.]

Assignment of errors. Filed April 18, 1924.

1. The Court of Appeals erred in affirming the action of the Supreme Court of the District of Columbia in adjudging, ordering, and decreeing:

"That the defendants, the Secretary of the Treasury and the Treasurer of the United States, their successors, attorneys, agents, and employees, be, and they hereby are, perpetually enjoined and restrained from delivering any warrant or order for the payment of the balance of the aforesaid moneys now remaining in the Treasury of the United States, and from making payment of said moneys, by warrant or otherwise, to any person except to the receiver or receivers appointed by the court in this cause."

2. The court erred in affirming the further provision of the decree:

"That the defendants, the Secretary of the Treasury and the Treasurer of the United States, be, and they hereby are, directed and enjoined to pay forthwith into the hands of the receiver hereby appointed in this cause the aforesaid moneys."

3. The court erred in affirming the decree which was null and void because:

159 (A) The Supreme Court of the District of Columbia did not have jurisdiction of the appellants, the Secretary of the Treasury and the Treasurer of the United States.

(B) It did not have the power to enjoin the appellant, the Secretary of the Treasury, from executing the act of Congress approved February 27, 1896 (29 Stat. 32).

(C) It was without authority or power "upon its own motion, and with the consent of the plaintiff," to award or distribute to attorneys any part of the fund specifically appropriated by the act of February 27, 1896.

4. The court erred in not reversing the decree appealed from.

Wherefore the appellants, the Secretary of the Treasury and the Treasurer of the United States, pray that the decree be reversed.

RICHD. RANDOLPH MCMAHON,
Attorney for the Appellants, Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States.

April 18, 1924.

[File endorsement omitted.]

160 In Court of Appeals of District of Columbia

[Title omitted.]

Order allowing appeal. Filed April 21, 1924

On consideration of the motion of the appellants Andrew W. Mellon, Secretary of the Treasury of the United States, and Frank White, Treasurer of the United States, for an appeal to the Supreme Court of the United States, it is by the court this day ordered that said motion be, and the same is hereby granted.

162 In Court of Appeals of the District of Columbia

Clerk's certificate

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 161, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Orinoco Company, Limited; John W. LeCrone, Receiver of The Orinoco Company, Limited; Andrew W. Mellon, Secretary of the Treasury of the United States, et al., Appellants, vs. The Orinoco Iron Company, No. 3989, April term, 1924, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 29th day of April, A. D. 1924.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsement on cover:) File No. 30456. District of Columbia Court of Appeals. Term No. 491. Andrew W. Mellon, Secretary of the Treasury of the United States, and Frank White, Treasurer of the United States, Appellants, vs. The Orinoco Iron Company. Filed June 27th, 1924. File No. 30456.

○

In the Supreme Court of the United States

OCTOBER TERM, 1924

ANDREW W. MELLON, SECRETARY OF THE Treasury of the United States, and Frank White, Treasurer of the United States, appellants,
v.
THE ORINOCO IRON COMPANY

No. 491

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS OR AFFIRM

The motion to dismiss should be denied.

It is based upon the theory that the appeal of the Secretary of the Treasury and the Treasurer of the United States, taken under the authorization of the Department of Justice, is "frivolous" and was taken for purposes of delay.

I assume that this Court will be slow to impute either frivolity or mere dilatory motives to responsible officers of the Government.

That the question involved in the case is debatable is shown by the fact that the learned Court of Appeals

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was divided on the question now remaining for decision, and even a cursory reading of the opinion of the dissenting judge (Judge Smith) will indicate that the contention of the Government, even if it be erroneous, can hardly be regarded as "frivolous," nor is it dilatory, for the Government is little concerned with the amount involved but is very much concerned with the propriety of the procedure which was followed by the appellee in this case.

Very briefly stated, the facts are these:

An American corporation, the Orinoco Company, Ltd., had a claim against the State of Venezuela for damages due to injuries inflicted upon it in Venezuela in the course of a revolution in that country. Our Department of State made a claim against Venezuela and finally a protocol was signed between the United States and Venezuela, whereby Venezuela agreed to pay the claim to the United States. When this payment was made into the Treasury of the United States a controversy arose between the Receiver of the Orinoco Company, Ltd., who had been appointed by a Minnesota State Court, and another company called The Orinoco Iron Company (the present appellee) as to which was the owner of the fund.

Congress had provided in a general statute as to the disposition of moneys which the United States might receive from foreign nations in behalf of its nationals.

By the Act of February 27, 1896, c. 34, 29 Stat. 28, 32, it was provided:

> Hereafter all moneys received by the Secretary of State from foreign governments and other sources in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.
>
> *The Secretary of State shall determine* the amounts due claimants, respectively, from each of such trust funds, and *certify* the same to the Secretary of the Treasury, who shall, *upon the presentation of the certificates of the Secretary of State,* pay the amounts so found to be due.
>
> Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment *to the ascertained beneficiaries* thereof of the certificates herein provided for. (Italics ours.)

It is apparent that the United States in collecting money from foreign nations for its nationals left it to the determination of the Secretary of State to distribute such funds, so far as any obligation of the United States was concerned. The Secretary of the Treasury and the Treasurer of the United States under the provisions of this Act were entitled to the protection of a certificate of the Secretary of State before making any payments.

Both the Minnesota receiver of the Orinoco Company, Ltd., and the Orinoco Iron Company thereupon applied to the Secretary of State for the certificate required by the Act. The State Department decided

that it could not determine an equitable interest in the fund and that it could only issue its certificate to the party in whose behalf it had made the claim against Venezuela.

Accordingly the Secretary of State issued two certificates, dated August 12, 1912, and May 5, 1917, requiring the Treasury Department to pay the fund in question to the Minnesota receiver of the Orinoco Company, Ltd.

Thereupon the Orinoco Iron Company brought this suit in the Supreme Court of the District of Columbia to determine the question of equitable ownership. In so far as the suit was brought against the Orinoco Company, Ltd., and its receiver, it may have been proper, if it had jurisdiction over these defendants, but the bill further asked and the court so ordered that the Secretary of the Treasury and the United States Treasurer, who were also made defendants, be enjoined from making any payment to the beneficiary named in the certificate and only to a receiver, to be appointed by the Supreme Court of the District of Columbia. Such receiver was appointed to hold the money until the Supreme Court of the District determined its true ownership.

The Supreme Court of the District of Columbia subsequently decided that the Orinoco Iron Company was the equitable owner of the fund and enjoined the Secretary of the Treasury and the United States Treasurer from making any payment to the Minnesota receiver of the Orinoco Company, Ltd., in whose favor the certificate of the Secretary of State had been issued.

On appeal to the Court of Appeals of the District of Columbia that court agreed that the Orinoco Iron Company was the equitable owner of the fund. The majority of the court also agreed that it had the power to enjoin the Treasury Department from making any payment under the certificate of the Secretary of State, but one member of the court (Mr. Justice Smith) dissented on the ground that, however clear the jurisdiction of the Supreme Court of the District was to determine the equitable ownership of the fund as between the two claimants, it had no jurisdiction to enjoin the Treasury Department from making payment under the Act of Congress already quoted.

Thereupon the Minnesota receiver of the Orinoco Company, Ltd., and the Secretary of the Treasury and the United States Treasurer took separate appeals, but the appeal of the receiver was dismissed for failure to docket it seasonably.

Thus the only appeal now before this Court is the appeal of the Secretary of the Treasury and the United States Treasurer.

It is therefore clear that as between the Orinoco Company, Ltd., and the Orinoco Iron Company it has been finally determined that the equitable owner of this fund is the Orinoco Iron Company, but this leaves the procedural question still open whether, in a controversy between two owners of a fund, the United States can be dragged in and its officials enjoined in a proceeding of this character, especially where Congress has itself provided a method of distributing these funds and in so doing has made the

Secretary of State the determining factor as to whom the United States will make payment. It also raises the question whether, when the Secretary of State has issued a certificate in favor of a receiver, appointed by a Minnesota State Court, the Treasury Department can be compelled by the Supreme Court of the District of Columbia to pay to its receiver. Was not the act of Congress intended to prevent such conflicts in jurisdiction so far as any obligation of the United States was concerned?

If the power of the Secretary of State to determine *as between the United States and any claimant* the form of payment can be thus disregarded, then, as the dissenting opinion indicates, any claimant, without awaiting the action of the Secretary of State, could ask for a mandamus to compel the Treasury Department to pay a sum, even though the United States, as in the instant case, had made the collection from a foreign nation in behalf of some other party. Thus the United States would not only be dragged into all kinds of litigation but the method of paying out such Treasury trust funds would be embarrassed by injunctions and mandamuses *and the determinative power of the Secretary of State would be nullified.*

Evidently Congress by the Act of 1896 intended that so far as the United States is concerned it would not be involved in private litigation about the ownership of such *quasi*-trust funds, and that, so far as the liability of the United States to distribute such trust funds was concerned, the question should rest with the Secretary of State to determine to whom the

United States would pay it, and then leave rival claimants to fight out their quarrels in the courts without embarrassing the Government.

If the United States compels a foreign nation to pay money, the disposition of that money is primarily a question for the United States, even though it owe a *moral* duty to distribute the fund to the parties in whose favor the claims were made against the foreign nation. Thus France in 1883 paid into the Treasury of the United States $5,000,000 in what are known as the "French spoliation claims," and these sums were never paid out to the various claimants for many decades thereafter. That the United States owes a *moral* duty to its citizens in the matter can not be questioned, but it may be questioned whether it is a duty which is enforceable in the courts.

At all events, Congress in collecting the money has a right to say that, so far as any liability of the United States is concerned to distribute it among those entitled to it, that this obligation of the United States will be fully met by the decision of the Secretary of State as to the manner of such distribution. Such certificate does not *judicially* determine its true ownership. It simply discharges the governmental obligation of distribution, leaving rival claimants to litigate for themselves.

Unless other claimants to this fund shall appear, the Secretary of State, in view of the decision of the Court of Appeals, may decide to cancel the certificate which he issued in favor of the receiver of the Orinoco Company, Ltd., and to issue a new certificate to the

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IN THE

Supreme Court of the United States

No. 491, October Term, 1924.

Andrew W. Mellon, Secretary of the Treasury of the United States, and Frank White, Treasurer of the United States, *Appellants*,

v.

The Orinoco Iron Company, *Appellee*.

Appeal From the Court of Appeals of the District of Columbia.

MOTION OF APPELLEE TO DISMISS OR AFFIRM.

William R. Harr,
Edward S. Duvall,
Attorneys for Appellee.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

No. 491, October Term, 1924.

Andrew W. Mellon, Secretary of the Treasury of the United States, and Frank White, Treasurer of the United States, *Appellants*,

v.

The Orinoco Iron Company, *Appellee*.

Appeal From the Court of Appeals of the District of Columbia.

MOTION OF APPELLEE TO DISMISS OR AFFIRM.

Now comes the Orinoco Iron Company, appellee, and moves the court to dismiss this appeal or affirm the decree below, with interest and costs.

STATEMENT OF CASE.

This suit concerns a fund of $56,250 in the Treasury of the United States, being the undistributed balance

of an indemnity of $385,000 received by the Secretary of State from Venezuela in ten equal annual instalments, beginning in September, 1909, for the benefit of the Orinoco Company, Limited, and its predecessors in interest, to settle and discharge all claims against Venezuela arising out of the illegal annulment of a certain concession, ouster therefrom, and confiscation of valuable property thereon. At the time of the ouster title to the concession was in the Limited Company, by mesne transfers from the original grantee.

Appellee, the Orinoco Iron Company, was lessee of the Limited Company for the remainder of the term of the concession; was in possession at the time of ouster and actively engaged in mining operations thereon; had expended approximately $175,000 in exploiting and operating the iron mines, for machinery, etc., and sustained large property losses, in excess of the indemnity, when ousted and its property and rights were confiscated by the Venezuelan authorities.

The Iron Company filed its bill in the Supreme Court of the District of Columbia setting up that the claim against Venezuela for indemnity was filed without its knowledge; that in the Memorials of the Orinoco Company, Limited, and its title holder, the Orinoco Corporation, addressed to the State Department in the matter, these companies relied on the operations of the appellee to show full compliance with the terms and conditions of the concession and wrongful annulment; that said companies fraudulently misrepresented to the State Department, and through it to Venezuela, that all of the property and rights confiscated were then the property of the Limited Company and its said title holder; that they and their predecessors in interest were the only persons or concerns injured or affected

by the illegal ouster, confiscation of property, and annulment of the concession; that the property and rights of appellee, as lessee, were ignored and fraudulently concealed by them in the negotiations for indemnity; that said indemnity was based largely if not entirely on appellee's losses in property and rights; and that in consideration of the payment of said indemnity Venezuela received from the United States the full release and discharge from all claims, customary in such transactions between nations, and in addition a relinquishment of title to Venezuela of the property and rights of appellee. In these circumstances, appellee claimed in and by its said bill, an equitable interest in, and lien on, said balance in the Treasury to the full extent thereof, and prayed for an injunction to restrain the Limited Company and John W. LeCrone, Receiver, from receiving said balance from the Treasury, and the officials of the Treasury from paying same over to them, and to require the Treasury officials, on final hearing, to pay same to a receiver to be appointed in the cause.

The Secretary of State of the United States, pursuant to the Act of Congress of February 27, 1896 (29 Stat. 32), providing for the disposition of moneys received from foreign governments in trust for citizens of the United States, undertook to distribute the award made by Venezuela as aforesaid in accordance with an arrangement entered into by the several companies named in the protocol of settlement between the two countries, by which the beneficial interest of the Orinoco Company, Limited, in said award, fixed at $75,000, was to be paid to one John W. LeCrone, who had been appointed receiver of said company, by a county court in Minnesota, at the instance of one Bax-

ter, attorney, secretary and a director of said company, who had obtained a default judgment for about $90,000 against his said company (a Wisconsin corporation) for alleged attorney fees.

The record shows that the Iron Company had applied to the Secretary of State to share in said award, to the extent of the expenditures incurred by it in an attempt to mine the iron deposits on the concession aggregating $174,908.47, but that the State Department, following its settled practice in distributing moneys received from foreign governments under said Act of February 27, 1896, had refused to consider any but the *prima facie* beneficiaries (*i. e.*, those named in the protocol of settlement), holding that parties, like the Iron Company, claiming adversely or asserting equitable liens upon the fund, should seek their remedy in the courts, but at the same time giving all such parties, including the Iron Company, ample notice of his proposed distribution so that they could take appropriate action for their protection.

The Supreme Court of the District of Columbia sustained plaintiff's claim of equitable title to the aforesaid balance of said fund in the Treasury (Rec., 55), and enjoined the defendants, the Orinoco Company, Limited, and its said receiver, LeCrone, from asserting any title to said moneys and making any demand or claim therefor on or against the United States, or any officer thereof, and also enjoined the defendants, the Secretary of the Treasury and the Treasurer of the United States, from delivering any warrant or order for payment of said moneys to any person *except to the receiver appointed by the court in this cause.* (Rec., 60, 61.)

Said decree further provided (Rec., 61-62) that said Treasury officials—

> "be and they hereby are directed and enjoined to pay forthwith into the hands of the receiver hereby appointed in this cause, the aforesaid moneys, and said receiver is hereby authorized and directed to execute and deliver a due acquittance and release to said officials of the Treasury Department upon receipt of payment of said moneys."

The Court of Appeals affirmed this decree in its entirety (52 Wash. Law Rep. 210), the late Chief Justice Smyth delivering the opinion of the court and Justice Van Orsdel concurring therein. Judge Smith, of the Court of Customs Appeals, who sat in the case, dissented "in so far as the opinion affirms the judgment of the lower court enjoining the Secretary of the Treasury," but concurred in the affirmance of the decree in all other particulars.

In their respective answers to plaintiff's bill, the Limited Company, and its said receiver, LeCrone, contended that the Iron Company had not complied with the terms of its contract with the Limited Company, and had voluntarily abandoned the same, and, moreover, that said contract had been duly forfeited, and also that the Iron Company had not expended exceeding $75,000 in its operations under its contract.

In disposing of these contentions, the Court of Appeals said:

> "The [trial] court found that the Iron Company was prevented from going ahead with the performance of its contract by the action of the government of Venezuela, by revolutions and other occurrences over which it had no control, that the making of the award embodied in the protocol was based on these facts, and that the Limited Company could not question them; also that the Iron Company was

always ready, able and willing to perform the contract, and was not in default, that it had spent a very much larger amount than the remainder of the award then in the Treasury, and that it was entitled to a decree for the remainder. A decree was entered for that amount, subject to an attorney's lien, which is of no importance here.

"The record makes it very clear that the Iron Company was ready, able and anxious to proceed with the development of the property; that it had expended about $175,000 for that purpose; that it was prevented from proceeding with its work by the revolutionists at first, and then by the government of Venezuela; that there was no basis for the claim of the Limited Company that the Iron Company had failed to perform its contract in any respect, and that its declaration that the Iron Company had forfeited the contract was futile; that all its [the Iron Company's] property, including 3,000 tons of ore ready for shipment and the right to a very large deposit of ore containing several hundred thousand tons were confiscated by the Venezuelan government; that the Limited Company wrongfully represented to the Venezuelan government that the property and right belonged to it when taken, and that it was entitled to receive compensation therefor; that, relying upon this representation, Venezuela made compensation for the wrongs enumerated, and that in the $385,000 which Venezuela paid on that account was included the value fixed by the protocol upon the property and right just mentioned. In view of this we are convinced that the Iron Company has a lien *ex maleficio* upon the balance of the award in the Treasury of the United States. It would be contrary to equity if the Limited Company should be permitted to enjoy the portion of the award which it secured by its wrongful representations." (Citing Pomeroy on Equity Jurisprudence, sec. 155.)

In Judge Smith's view it was unnecessary to enjoin the Secretary of the Treasury "since the court had jurisdiction of the receiver and of the beneficiaries in this case and had the power to enjoin them from receiving the moneys and the power to compel the transfer of the balance of the fund to those entitled to receive it."

GROUNDS OF THIS MOTION TO DISMISS OR AFFIRM.

One aspect of this case was before the court at its last term. We refer to the appeal of the Orinoco Company, Limited, and John W. LeCrone, receiver (No. 1018, October Term, 1923), which was docketed and dismissed by this court on May 12, 1924, and a motion to reinstate which was denied on June 9, 1924, the mandate therein being sent down to the Court of Appeals of this District on June 19, 1924.

Notwithstanding the fact that, by said action of this court, the decree of the Supreme Court of the District of Columbia establishing title in the Orinoco Iron Company to the balance of the fund in the Treasury, amounting to $56,250, which is the subject-matter of this suit, has become absolute and final as against the adverse claimants thereto, including the Orinoco Company and LeCrone, receiver, and notwithstanding the legal title to said moneys has been transferred by operation of law, to receiver Proctor, the Treasury officials have insisted upon the prosecution of their appeal to this court.

We ask that the appeal of the Secretary of the Treasury and Treasurer of the United States be dismissed or the decree affirmed for the following reasons:

(1) The appeal of the Treasury officials is frivolous, in view of *Houston v. Ormes*, 252 U. S. 468, wherein this court, after a careful review of the cases, sustained the jurisdiction of the Supreme Court of the District of Columbia, through a mandatory writ of injunction or a receivership, to control the ministerial duty of payment imposed by statute upon the Secretary of the Treasury, in the interest of one having a superior equitable claim to a fund in the Treasury, and expressly approved such practice.

(2) The decree of the Supreme Court of the District of Columbia in this case now having become final insofar as it established the right of the Orinoco Iron Company to the balance of the fund in the Treasury, and effectuated the transfer of the legal title to Proctor, receiver, through the action of this court at the last term in dismissing the aforesaid appeal of the Orinoco Company, Limited, and its Minnesota receiver, LeCrone, that part of said decree which enjoins the Treasury officials from paying said money over to any person other than Proctor, the receiver appointed in this cause, and directs them to pay the same to said receiver, merely requires the Treasury officials to do what it is their plain duty to do in view of the transfer of the title to said moneys effected by said decree, and what it is absolutely necessary they should do in order to give the United States a good acquittance. (*United States v. Borcherling*, 185 U. S. 223.)

ARGUMENT.

I.

HOUSTON v. ORMES IS CONCLUSIVE AS TO THE AUTHORITY OF THE TRIAL COURT TO ENJOIN THE SECRETARY OF THE TREASURY TO PAY OVER THE FUND TO THE RECEIVER IN THIS CAUSE.

The errors assigned by the appellants present for review but one substantial question, namely, whether the court had jurisdiction to grant a mandatory injunction against the Treasury officials to pay this money over to Proctor, receiver in the cause, after finding that appellee had an equitable interest in and lien upon said fund to the full extent thereof. It will be apparent upon reading of the Act of Congress quoted below, that the duty of the Secretary of the Treasury with regard to payments thereunder is merely ministerial. And as hereinafter pointed out this is conceded by the appellants.

This question has already been decided by this court, as heretofore shown, and it is therefore surmised that the real purpose of the Treasury officials in prosecuting this appeal is to secure, indirectly, a reversal of this court's decision in *Houston v. Ormes*, 252 U. S. 468.

The Act of Congress, approved February 27, 1896 (29 Stat. 32), which provides:

> "Hereafter all moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.
>
> "The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the

Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

"Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the ascertained beneficiaries thereof of the certificates herein provided for."

The answer to a rule to show cause filed in this case on behalf of Secretary Mellon and Treasurer White (Rec., 56), sets up two objections to the jurisdiction of the court:

1. That the authority conferred upon the Secretary of *State* by the Act of February 27, 1896, providing for the distribution of moneys received from foreign governments, to determine the beneficiaries of any such funds, is not subject to judicial control. (Rec., 58.)

This point may be conceded, because no decision or action of the Secretary of State is sought to be reviewed or controlled in this suit. Only the confessedly ministerial act of payment by the Secretary of the Treasury, upon the certificates issued by the Secretary of State, is covered by the decree. (Rec. 60-62.) It will be noted that the Secretary of State was not made a party to this suit.

2. The second defense set up in said answer of the Treasury officials is that "the complainant seeks to enjoin these defendants from the performance of *a plain ministerial duty imposed by statute*, which said defendants are to perform in compliance with the mandate of the said Act of February 27, 1896." (Rec., 59.)

The answer to this latter contention is that in *Houston v. Ormes, supra*, this court expressly decided that *"a plain ministerial duty imposed by statute"* upon

the Secretary of the Treasury, to pay a party named therein a certain amount of money, could be controlled by the Supreme Court of this District, in the interest of one having a superior equitable claim to the fund.

As stated by Chief Justice Smyth, in delivering the opinion of the Court of Appeals in this case, the duty to pay imposed upon the Secretary of the Treasury is no more direct and positive in this case than in *Houston v. Ormes.*

The mandate of Congress involved in the Houston case was that the Secretary of the Treasury should pay Susan Sanders so much money. The mandate of the statute involved in this case is that the Secretary of the Treasury shall pay to the persons designated in the certificates of the Secretary of State the amount designated therein. Clearly, no more sanctity attaches to the certificate of the Secretary of State in this case than attached to the direct mandate of Congress involved in the Houston case. It is "a distinction without a difference," so far as concerns the authority of the courts of this District to control the ministerial duty of paying out in the interest of one having a superior equitable title to the fund.

Manifestly, in this case, the only thing for the Secretary of the Treasury to be concerned about is that he receive a good acquittance. This he can get by paying the receiver in this cause, because not only the party designated as receiver of the moneys in the certificates of the Secretary of State (John W. LeCrone, the Minnesota receiver), but the Orinoco Company, Limited (the real beneficiary under the award), were both made parties to this suit and were not only served by publication but appeared and defended on the merits, and,

as above stated, the decree of the Supreme Court of the District of Columbia establishing the title of the Orinoco Company to said money, as against said parties, has now become final.

It may be noted, in this connection, that Judge Smith of the Court of Customs Appeals, who sat in this case in the Court of Appeals, while expressing the view that the decree of the trial court should be modified so far as it enjoined the Secretary of the Treasury, added:

> "The court had jurisdiction, however, of the receiver and the beneficiaries in this case and had the power to enjoin them from receiving the money and the power to compel the transfer of the balance of the fund to those entitled to receive it."

The judges of the Court of Appeals were therefore united in upholding the jurisdiction of the Supreme Court of the District of Columbia over the receiver, LeCrone, and the real beneficiary of the award (the Limited Company), and also agreed as to the power of the trial court "to compel the transfer of the balance of the fund to those entitled to receive it."

It is apparent, from reading Judge Smith's opinion, that he failed to distinguish between the jurisdiction of the trial court with respect to the *ministerial duty of paying* imposed upon the Secretary of the Treasury, and its power, or rather lack of power, with respect to the *quasi-judicial duty of ascertaining the beneficiaries to the fund* imposed upon the Secretary of State, as he says:

> "Indeed, if it be true that the Secretary of the Treasury can be enjoined from making the pay-

ments directed by the Secretary of State, *then as a corollary of that proposition* it would seem that the findings of the Secretary of State may be controlled and directed by the judicial department of the Government."

This statement shows how utterly Judge Smith failed to grasp the purport of *Houston v. Ormes,* where this court said (252 U. S. 473):

> "In the present case it is conceded, and properly conceded, that payment of the fund in question to the defendant Sanders is a ministerial duty, the performance of which could be compelled by mandamus. But from this it is a necessary consequence that one who has an equitable right in the fund as against Sanders may have relief against the officials of the Treasury through a mandatory writ of injunction, or a receivership which is its equivalent, making Sanders a party so as to bind her and so that the decree may afford a proper acquittance to the government. The practice of bringing suits in equity for this purpose is well established in the courts of the District. Sanborn vs. Maxwell, 18 App. D. C. 245; Roberts vs. Consaul, 24 App. D. C. 551, 562; Jones vs. Rutherford, 26 App. D. C. 114; Parish vs. McGowan, 39 App. D. C. 184, s. c. on appeal McGowan vs. Parish, 237 U. S. 285, 295. *Confined, as it necessarily must be, to cases where the officials of the Government have only a ministerial duty to perform, and one in which the party complainant has a particular interest, the practice is a convenient one, well supported by both principle and precedent.*"

The Court of Appeals, in its opinion in this case, said:

> "It is provided by statute (29 Stat. 32) that moneys received by the Secretary of State from

foreign governments in trust for citizens of the United States shall be covered into the Treasury, and that the Secretary of State shall determine the amounts due claimants, respectively, from the trust fund, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates, pay the amounts so found to be due. The Iron Company requested the Secretary of State to recognize its claim and pay the amount thereof out of the fund received from Venezuela. This request was denied by the Secretary on the ground that the claim was cognizable by the courts rather than by the Department of State, and that according to the uniform practice of the Department parties holding claims like that of the Iron Company against a trust fund in the Treasury were remitted to the courts for the enforcement of their rights.

"Appellants, including the Treasury officials, point to the statute, which says that the Secretary of the Treasury 'shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due,' and urge that the courts have no power to direct the Secretary of the Treasury to pay to any person other than one holding a certificate of the Secretary of State. We think this is a misconception of the law. A question quite similar to the one thus presented was passed upon by this court in *McAdoo v. Ormes*, 47 App. D. C., 364, 46 Wash. Law Rep., 101. Our decision was taken to the Supreme Court of the United States on appeal and was there affirmed. In that case Congress, in an appropriation act, had directed the Secretary of the Treasury to pay to claimants in the act named the several sums appropriated therein. Among those named was one Sanders. It will be noticed that the direction to the Secretary of the Treasury to pay to the claimant the amount appropriated was fully as direct and

positive as the direction in the statute which we are considering. One Lockwood instituted a suit in the Supreme Court of this District to establish an equitable lien on the fund appropriated to Sanders, who was made a defendant, together with the Secretary of the Treasury and the Treasurer of the United States. There was a final decree adjudging that a certain sum was due from Sanders to Lockwood, and appointing a receiver to collect from the Secretary of the Treasury the amount involved, and directing the Secretary to pay the same over to the receiver. The Treasury officials challenged the jurisdiction of the court upon substantially the same grounds as those set forth in this case. In denying the soundness of their position the court said that the payment of the fund in question to the defendant Sanders was a ministerial duty, the performance of which would be compelled by mandamus. 'But from this,' continued the court, 'it is a necessary consequence that one who has an equitable right in the fund as against Sanders may have relief against the officials of the Treasury through a mandatory writ of injunction, or a receivership which is its equivalent, making Sanders a party so as to bind her and so that the decree may afford a proper acquittance to the Government. The practice of bringing suits in equity for this purpose is well established in the courts of the District.' *Houston v. Ormes*, 252 U. S., 469, 473, in which many cases are cited.

"Here the Iron Company has an equitable right in the fund as against the Limited Company and LeCrone, and therefore has a right to relief, as Lockwood had, against the officials of the Treasury, through the proceedings which have been taken. We do not think the matter is open to further discussion."

We submit that, as stated by the Court of Appeals, this case cannot be distinguished from *Houston v.*

Ormes. It is worthy of note, in this connection, that Judge Smith, of the Court of Customs Appeals, in dissenting on this branch of the case, made no effort to distinguish *Houston v. Ormes* and cites no authority for his view, although he concedes that the payment by the Secretary of the Treasury to the beneficiaries ascertained by the Secretary of State, is merely a ministerial function.

II.

UNDER UNITED STATES v. BORCHERLING, 185 U. S. 223, IT IS THE DUTY OF THE SECRETARY OF THE TREASURY TO TAKE NOTICE OF THE TRANSFER OF TITLE EFFECTED BY THE FINAL DECREE OF THE SUPREME COURT OF THIS DISTRICT IN THIS CASE AND PAY ACCORDINGLY, IN ORDER TO GIVE THE UNITED STATES A GOOD ACQUITTANCE.

The Borcherling case established the principle that where the Secretary of the Treasury is charged by statute with the payment of money, it is his duty to recongnize a decree of a court of competent jurisdiction transferring title to said moneys from the beneficiary under the statute to a receiver appointed in the cause, and pay only to said receiver, otherwise the obligation of the United States will not be discharged. Said case further holds that where, in disregard of such transfer by operation of law, payment is made to the beneficiary under the statute, such payment is no defense to a suit by said receiver against the United States in the Court of Claims to recover the amounts so illegally disbursed.

It follows therefore that the decree of the Supreme Court of the District of Columbia in this case, insofar as it enjoins the Treasury officials to pay the moneys

in question over to the receiver appointed in this cause, should be affirmed, because it merely commands them to do what it is their plain duty to do, having knowledge of the transfer of title to said money effected by said decree.

III.

The Present Position of the Treasury Officials in This Matter Inconsistent With That Formerly Taken and Not Justified by Developments.

It is also to be noted, in this connection, that the predecessor of the present Secretary of the Treasury heretofore resisted mandamus proceedings brought by said LeCrone, as receiver of the Orinoco Company, Limited, to compel said Treasury official to pay over the money in question to him as said receiver, on the ground of the pendency of this and another suit in the Supreme Court of the District of Columbia concerning this award (*LeCrone v. McAdoo*, 48 App. D. C., 181).

The Court of Appeals, in its opinion in that case, stated the facts thereof as follows (*Ib.*, pp. 181-182):

> "The appellant, John W. LeCrone, is the receiver of the Orinoco Company, Limited, having been appointed by a Minnesota court. As such receiver he claimed a fund of $56,250 in the hands of the Secretary of the Treasury, and applied to the lower court for a mandamus to compel its payment to him. The Secretary answered that the fund was claimed by two other parties in suits commenced by them on the equity side of the Supreme *swered to the merits in those cases*, and that they Court of the District; *that the appellant had an-*

were still pending. The Secretary further answered that he should not be required to pay out the fund *until the controversy between the appellant and the plaintiffs in those suits was finally determined so that he might disburse it with entire safety to the United States.* To this answer appellant demurred. The demurrer was overruled, and the appellant refusing to plead further, his application for the writ was dismissed."

In affirming the action of the lower court in that case, denying the writ of mandamus against the Secretary of the Treasury, the Court of Appeals said (*Ib.* p. 186):

> "Appellant asserts in argument that the Supreme Court of the District, in the suits just mentioned, has no power to enjoin the Secretary of the Treasury from paying out the fund; that it does not appear that the court has jurisdiction of him as receiver; that the Minnesota court has exclusive control of the administration of the fund; and that consent has not been given by that court to the institution of the equity suits.
>
> "The Supreme Court of the District is a court of general jurisdiction, and has full power to dispose of all the questions raised by the appellant, or which he may hereafter raise, and to grant him complete relief with respect to every right which he may have to the fund in controversy. About this we do not understand that there is, or can be, any debate. Under these circumstances he is not entitled to the writ of mandamus."

A writ of error sued out from this court in that case by LeCrone was dismissed because of his failure to substitute the successor of Secretary McAdoo (*LeCrone v. McAdoo,* 253 U. S., 217). In disposing of that writ of error, Mr. Justice Holmes, speaking for the court, said (253 U. S. 218):

> "The theory of the answer [of the Secretary of the Treasury] seems to be that the purpose of the Act of Congress was to appropriate a fund to the claim and to transfer the claim to that fund, leaving the question of title open to litigation in the ordinary courts, as has been held in more or less similar cases. *Butler v. Goreley,* 146 U. S. 308, 309, 310; Id., 147 Mass. 8, 12; *United States v. Dalcour,* 203 U. S. 408, 422; *Robertson v. Gordon,* 226 U. S. 311, 317. See, also, *Bayard v. White,* 127 U. S. 246. It is thought that Congress hardly can have sought to confer judicial powers upon the Secretary of State. *United States v. Borcherling,* 185 U. S. 223, 234. And as the certificates are not gifts but are in recognition of outstanding claims, *Williams v. Heard,* 140 U. S. 529, reversing s. c., 146 Mass. 545, judicial action is supposed to be necessary for the final determination of the right."

In view of the action of the predecessor of the present Secretary of the Treasury in successfully opposing the mandamus proceedings brought by LeCrone, the Minnesota receiver, by showing that the courts of this District *had* jurisdiction of this controversy and that a final determination thereof was necessary to the due protection of the United States, it hardly seems becoming of the present Secretary to resist, in this suit, and by successive appeals, the very jurisdiction which his predecessor had urged in opposing LeCrone's application, especially in view of the decision of this court in *Houston v. Ormes* covering the very point of jurisdiction which he now raises. At least the Secretary "well might have remained satisfied" with the well reasoned decisions of the two lower courts. (*Edwards, Collector, v. Slocum,* 264 U. S. 61, 62.)

This change of position on the part of the Secretary of the Treasury has been of considerable moment to

appellee because it has enabled the unofficial appellants to prosecute their appeals, both to the Court of Appeals and this court, without giving a supersedeas bond, fixed by the trial court at $10,000, to cover interest on the fund, because of the statute exempting the head of a Department of the Government from such requirement.

As the matter now stands, the Secretary of the Treasury is insisting on paying the money in question over to the agent of the party who has been adjudged guilty of perpetrating a fraud upon the Iron Company and held not entitled to receive the same.

IV.

Application of Rule 23.

Because of the frivolous nature of this appeal, especially after final determination of the litigation between all of the parties in interest, and because of the large losses in interest caused to appellee by the delay due to the appeal of the Treasury officials, it is submitted that this is a proper case for the application of Rule 23 of this court and the imposition of interest from the date of the decree, it being a decree for the payment of money. (*Smith, Auditor, v. Jackson,* 246 U. S. 388.)

CONCLUSION.

It is submitted, therefore, that the appeal should be dismissed or the decree of the court below affirmed, with interest and costs to appellee.

William R. Harr,
Edward S. Duvall,
Attorneys for Appellee.

Please see also Reply Brief for Appellee in answer to Solicitor General's Brief.

(16)

IN THE

Supreme Court of the United States

No. 491. October Term, 1924.

Andrew W. Mellon, Secretary of the Treasury, *et al., Appellants,*

vs.

The Orinoco Iron Company, *Appellee.*

REPLY BRIEF FOR APPELLEE, UPON MOTION TO DISMISS OR AFFIRM.

William R. Harr,
Edward S. Duvall,
Attorneys for Appellee.

Press of Byron S. Adams, Washington, D. C.

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The Orinoco Iron Company, *Appellee.*

REPLY BRIEF FOR APPELLEE, UPON MOTION TO DISMISS OR AFFIRM.

In opposing appellee's motion to dismiss or affirm, the Solicitor General (on page 5 of his brief) recognizes that:

> "as between the Orinoco Company, Limited, and the Orinoco Iron Company it has been finally determined that the equitable owner of this fund is the Orinoco Iron Company," appellee here.

The Solicitor General also recognizes that under the Act of February 27, 1896, relating to the distribution of moneys received from foreign governments in trust for citizens of the United States, the duty of the Secre-

tary of the Treasury to pay, upon the certificates issued by the Secretary of State, is a ministerial one which can be enforced by mandamus. (Brief, page 8.)

These two concessions manifestly put this case on all fours with *Houston* v. *Ormes,* 252 U. S. 469, which the Solicitor General endeavors to distinguish. To contend that the ministerial duty to pay, imposed by said statute upon the Secretary of the Treasury, can not be controlled by a court of competent jurisdiction in the interest of one having a superior equitable claim to the fund, is simply to ignore *Houston* v. *Ormes,* for that is what that case expressly decided.

The fact that, under the Act of February 27, 1896, a certificate of the Secretary of State designating the beneficiary is required, is immaterial here, *because the necessary certificates have been issued.* These established the legal right of the receiver of the Orinoco Company, Limited, to demand the moneys in the Treasury, but the final decree of the Supreme Court of the District of Columbia in this case, establishing appellee's equitable right thereto as against said receiver and the company he represented, operated to transfer the title to said moneys to the Iron Company, *of which fact the Secretary of the Treasury was bound to take notice under the decision of this court in the Borcherling Case* (185 U. S. 223), so that the decree, so far as it enjoins the Secretary of the Treasury from paying the money over to the receiver appointed by the court in this case merely enjoins him to do what it is his plain duty to do under the circumstances. And *Houston* v. *Ormes* is conclusive as to the jurisdiction of the Supreme Court of the District of Columbia to enforce appellee's equitable claim of title to said

moneys by a mandatory writ of injunction, such as we have here.

The certificates (two in number) issued by the Secretary of State are set forth in the answer filed on behalf of appellants (Rec., 57-58). They are directed to the Secretary of the Treasury and request him to cause warrants to be issued in favor of LeCrone, receiver of the Orinoco Company, Limited, for certain amounts. aggregating $56,250, which amounts, the Secretary of State says, "I hereby certify to be due and payable out of the following-named trust fund: Claims of the Orinoco Corporation against Venezuela." In view of these certificates, the situation, in law, is exactly the same as if, by direct mandate of Congress, the Secretary of the Treasury had been directed to pay LeCrone said amount of money out of said fund. Nothing remains but the ministerial act of payment, and the legal situation is therefore no different from that which existed in *Houston* v. *Ormes.*

A similar situation also existed in the *Borcherling Case.* Notwithstanding the Act of Congress involved in that case expressly provided that any balance found by the Secretary of the Treasury to be due Price should be paid to *Price or his heirs,* this Court, in affirming the judgment of the Court of Claims, held that the Secretary of the Treasury was required to take notice of the fact that the right to said money had been transferred by operation of law to Borcherling, the New Jersey receiver, saying (185 U. S. 232-233):

> "As to the contention that the debt due from the United States to Price could not be transferred from Price to the claimant by operation of the

> laws of New Jersey, nor by any decree that the courts of New Jersey, operating under such laws, could make, it is sufficient to say that this court has held otherwise," citing *Vaughan* v. *Northrup*, 15 Pet. 1, and *Price* v. *Forrest*, 173 U. S. 410.

So that the Secretary of the Treasury would pay the moneys here in question to any other person than the receiver appointed by the final decree in this cause *at his peril.*

At the close of his brief (p. 9), the Solicitor General makes this statement as if it were a controlling proposition (italics his):

> "In the instant case, a discretion was given to the Secretary of State, *and no duty rested upon the Secretary of the Treasury until the Secretary of State exercised that discretion and the former was bound by the decision of the latter.*"

The correctness of this proposition may be conceded, but it does not dispose of *Houston* v. *Ormes.* In that case, too, the Secretary of the Treasury was bound by the mandate of Congress to pay Susan Sanders so much money, until the Supreme Court of the District of Columbia, in the exercise of its equitable powers, decided that some one else had a superior claim to a portion thereof.

Obviously a person named as beneficiary by the Secretary of State, under the Act of February 27, 1896, can have no greater right to receive payment of said moneys, without interference by the Supreme Court of the District of Columbia, in the exercise of its equitable powers, than a person specifically designated as payee by Congress itself in an appropriation Act, as was the case in *Houston* v. *Ormes.*

The decree in this case in no wise undertakes to override the decision of the Secretary of State, but merely holds that the amount of the Orinoco award which has been certified by the Secretary of State to be paid to the receiver of the Orinoco Company, Limited, *is subject to a trust in favor of the Orinoco Iron Company.* Thus the decree, after declaring that the Iron Company had established its claim of equitable title to said money, states that "said defendants, the Orinoco Company, Limited, and its said receiver, have no valid right, title or interest therein or thereto, *except as trustees for the plaintiff.*" (Decree, Rec., 60-61, par. 2.)

Manifestly, there is nothing in the Act of February 27, 1896, which prevents the courts of the District of Columbia from controlling the payment by the Secretary of the Treasury to a beneficiary designated by the Secretary of State, by declaring the beneficiary designated by the Secretary of State trustee for the person found equitably entitled thereto.

The confusion of thought in the brief of the Solicitor General about this case is apparent from the following paragraph thereof (p. 6, italics his):

> "If the power of the Secretary of State to determine *as between the United States and any claimant* the form of payment can be thus disregarded, then, as the dissenting opinion indicates, any claimant, without awaiting the action of the Secretary of State, could ask for a mandamus to compel the Treasury Department to pay a sum, even though the United States, as in the instant case, had made the collection from a foreign nation in behalf of some other party. Thus the United States would not only be dragged into all kinds of litigation but the method of paying out such Treasury trust funds would be embarrassed

by injunctions and mandamuses *and the determinative power of the Secretary of State would be nullified.*"

This is tantamount to saying that, if the mere ministerial duty of payment conferred upon the Secretary of the Treasury, by the Act of February 27, 1896, can be controlled by the courts of this District, in the interest of one having a superior equitable title to the fund, *after* the beneficiary thereof has been designated by the Secretary of State, the result would be to authorize said courts to compel payment by the Secretary of the Treasury *before* the Secretary of State had exercised "the determinative power" conferred upon him by said statute. This is a manifest *non sequitur.*

In view of the decisions of this Court in *Houston* v. *Ormes* and *United States* v. *Borcherling,* it would be very strange if the Supreme Court of this District could not make its decree transferring title to the moneys in the Treasury to the Iron Company effective by requiring payment thereof by the Secretary of the Treasury (its custodian merely) to the receiver appointed by its said decree, but was limited, as Judge Smith suggested, to enjoining LeCrone from receiving the same, leaving the Secretary of the Treasury free to pay the same if LeCrone saw fit to violate the decree.

We submit, therefore, that the final disposition of this case should not be delayed, but that the appeal should be dismissed, or the judgment of the lower court affirmed, without further argument.

WILLIAM R. HARR,
EDWARD S. DUVALL,
Attorneys for Appellee.

MELLON, SECRETARY OF THE TREASURY OF THE UNITED STATES, ET AL. *v.* ORINOCO IRON COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 491. Motion to dismiss or affirm submitted October 13, 1924.—Decided November 17, 1924.

The Act of February 27, 1896, c. 34, 29 Stat. 32, directs that moneys received by the Secretary of State from foreign governments in trust for citizens of the United States or others, shall be deposited in the Treasury; and that the Secretary of State shall determine the amounts due claimants from such funds and certify the same to the Secretary of the Treasury who, upon presentation of such certificates, shall pay the amounts so found to be due; the act appropriating such funds in the Treasury "for the payment to the ascertained beneficiaries thereof of the certificates herein provided for."

Held, that the duty of the Secretary of the Treasury in paying such certificates is ministerial; and that, where the claimant named in a certificate held as trustee *ex maleficio* for another whose equity the Secretary of State had remitted to the courts, the Supreme Court of the District of Columbia had jurisdiction of a suit brought by such beneficial owner against the other in which the Secretary of the Treasury and the Treasurer of the United States might be impleaded, be required to pay over the money to a receiver, and be enjoined from making other disposition of it. *Houston* v. *Ormes*, 252 U. S. 469. P. 125.

54 App. D. C. 218; 296 Fed. 965, affirmed.

APPEAL by the Secretary of the Treasury and the Treasurer of the United States from a decree of the Court of Appeals of the District of Columbia, which affirmed a

decree of the Supreme Court of the District directing payment of a fund to a receiver and granting an injunction against other disposition of it.

Mr. William R. Harr and *Mr. Edward S. Duvall*, for appellee, in support of the motion to dismiss or affirm.

Mr. Solicitor General Beck, for appellants, in opposition to the motion.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The subject of this suit is $56,250, now in the Treasury of the United States, which is the undistributed balance of an indemnity of $385,000 received by the Secretary of State from Venezuela. This was in satisfaction of the claim of the Orinoco Company, Limited, hereafter known as the Limited Company, against Venezuela because of her illegal annulment of the so-called Fitzgerald concession, which by mesne transfers from the original concessionaire had vested in the Limited Company, and of her ouster of that company. The appellee, the Orinoco Iron Company, was the lessee of the Limited Company of mining rights in the concession covering the remainder of the term of the concession, and was in possession of them at the time of the ouster. The Iron Company had engaged actively in mining operations and had expended $175,000 in exploiting and operating the mines when its property and rights were thus confiscated.

At the instance of the Limited Company, our Department of State made the claim against Venezuela for the injuries sustained, and finally a protocol was signed between the two countries whereby Venezuela agreed to pay and did pay $385,000 to the United States.

By Act of February 27, 1896, c. 34, 29 Stat. 28, 32, it is provided as follows:

"Hereafter all moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

"The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

"Each of the trust funds covered into the Treasury as aforesaid is hereby appropriated for the payment to the ascertained beneficiaries thereof of the certificates herein provided for."

After the payment was made into the Treasury of the United States, a controversy arose between the receiver of the Limited Company, who had meantime been appointed by a Minnesota state court, and the Orinoco Iron Company, the present appellee, as to who was entitled to the fund, and the latter sought to have the payment ordered made to it. The Secretary of State, in a letter to the counsel of the Orinoco Iron Company said in answer:

"I desire to say that the Department of State, in making its determination as to the distribution of awards or settlements of international claims, is always guided by certain fundamental rules, which may be roughly stated as follows:

"The awards are distributed among the original claimants showing themselves entitled thereto, or to the heirs, representatives, devisees, or legal assignees of such claimants. On occasion the Department also makes payments to such other persons in such amounts as the parties above indicated, being determined, shall agree and direct. Except as to such claimants claiming to share in the award as claimants, or their heirs, devisees, representatives, or legal assignees claiming to share in the award by

reason of such relationship to such claimants, all parties who allege claims against the fund itself, as also all creditors of such claimants, or of their heirs, devisees, representatives, or legal assignees, are in accordance with the uniform rule and practice of the Department remitted to the courts for the enforcement of the rights of which they consider themselves possessed, or to private agreement with the parties in interest,—as they may be advised."

The Secretary of State accordingly directed the payment of the money to the Limited Company and to other persons designated by it, and sent proper certificates to the Secretary of the Treasury for such distribution.

The Orinoco Iron Company then filed this bill in the Supreme Court of the District of Columbia to restrain the Secretary of the Treasury and the Treasurer of the United States from paying the fund still remaining in the Treasury to the Limited Company and its receiver, LeCrone, in accordance with the certificate of the Secretary of State, and asked that a receiver be appointed to receive the fund while the right of the complainant to appropriate the fund to its claim should be litigated. The Limited Company and its receiver were made parties, and the issue between the complainant and the Limited Company, with respect to this fund, was heard and decided in favor of the complainant and present appellee. Both the Supreme Court of the District and the Court of Appeals found that at least $175,000 of the $385,000 of the award was based upon the contributions which the Orinoco Iron Company had made in execution of its contract to work the iron mines of the concession, and that the Limited Company in ignoring and denying all rights of the Orinoco Iron Company to share in the fund had been guilty of fraud in appropriating that which was the equitable interest of the Orinoco Iron Company. Accordingly the injunction was made permanent, a re-

ceiver was appointed, and the Secretary of the Treasury was directed to pay the $56,250 to that receiver, who was authorized to execute a full acquittance of the United States as from the parties to the suit.

This is an appeal by the Secretary of the Treasury and the Treasurer of the United States to which the Orinoco Company, Limited, and its receiver are not parties. They took a separate appeal which was dismissed last term, 265 U. S. 598. The question raised on this appeal therefore does not involve the merits of the controversy between the Orinoco Iron Company, the appellee, and the Orinoco Company, Limited, and its receiver. We must assume here, therefore, that in attempting to take over and deny to the Orinoco Iron Company the equitable interest of that company, the Orinoco Company, Limited, and its receiver are as to the Iron Company in the position of a trustee *ex maleficio*.

It is contended, on behalf of the Secretary of the Treasury, that his duty in this regard is entirely ministerial, that he must carry out the behest of the Secretary of State, who is charged by law with determining who the proper claimants are, and therefore that, after the decision of the Secretary of State, no court may interfere between the payment by the Secretary of the Treasury to the claimant found to be entitled. We consider this question to be already settled by the decision of this Court against the Government's contention.

In *Houston* v. *Ormes*, 252 U. S. 469, Congress had appropriated $1,200 to pay a claim found by the Court of Claims to be due to one Susan Sanders. This was a suit, brought by one who claimed an equitable lien for attorney's fees upon the amount thus appropriated, to enjoin the Secretary of the Treasury and the Treasurer of the United States from paying the amount due on that lien to the person named in the appropriation, and to require them to pay the sum claimed to a receiver in the

suit pending the hearing and to accept the receipt of the receiver as in full acquittance of the Government from the parties to the suit for the amount paid him. The Court in that case said, p. 473:

"In the present case it is conceded, and properly conceded, that payment of the fund in question to the defendant Sanders is a ministerial duty, the performance of which could be compelled by a mandamus. But from this it is a necessary consequence that one who has an equitable right in the fund as against Sanders may have relief against the officials of the Treasury through a mandatory writ of injunction, or a receivership which is its equivalent, making Sanders a party so as to bind her and so that the decree may afford a proper acquittance to the Government. The practice of bringing suits in equity for this purpose is well established in the courts of the District (*Sanborn* v. *Maxwell*, 18 App. D. C. 245; *Roberts* v. *Consaul*, 24 App. D. C. 551, 562; *Jones* v. *Rutherford*, 26 App. D. C. 114; *Parish* v. *McGowan*, 39 App. D. C. 184; *s. c.* on appeal, *McGowan* v. *Parish*, 237 U. S. 285, 295). Confined, as it necessarily must be, to cases where the officials of the Government have only a ministerial duty to perform, and one in which the party complainant has a particular interest, the practice is a convenient one, well supported by both principle and precedent."

It seems to us that the present case can not be distinguished from the one cited. It is conceded by the Government that the duty of the Secretary of the Treasury is ministerial and is to pay the amount ordered distributed by the Secretary of State to the persons named in his certificate. Certainly the action of the Secretary of the Treasury, in obedience to an appropriation by Congress, is neither more nor less of a ministerial duty than the obligation of the Secretary of the Treasury in the case at bar to act in compliance with the direction of

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the Secretary of State. This case is here on a motion to dismiss or affirm. The decree of the Court of Appeals is

Affirmed.